



## Social Enterprise in South Africa: A Tentative Typology

Frederik CLAEYÉ

Lille Catholic University, LEM UMR CNRS 9221, France  
Nelson Mandela Metropolitan University, South Africa

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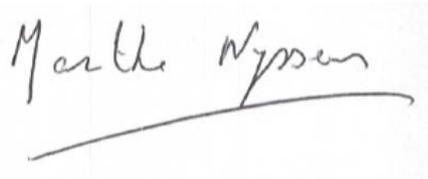
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Jacques Defourny  
HEC – University of Liege



Marthe Nyssens  
Catholic University of Louvain

ICSEM Project Scientific Coordinators

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## ABSTRACT

The aim of the paper is to present a tentative typology of social enterprises in South Africa. It also tries to establish a base line on the current state of social entrepreneurship in South Africa. While the term seems to have been appearing more and more frequently in both the public and political domain in the last decade or so, our current knowledge of social enterprise in South Africa (as in Africa more broadly) remains very limited. This paper tries to address this dearth of academic literature on social entrepreneurship in South Africa by reviewing the extant academic and grey literature as well as various policy documents with the aim of discerning the various legal forms under which social enterprises can incorporate. The paper distinguishes three avenues for incorporation: as a non-profit entity, a for-profit entity or a hybrid structure. It calls for both rigorous and systematic empirical and theoretical work that is grounded in the realities of the country in order to strengthen sound policy decision-making as well as effective organization and management of these organizations, which can play a crucial role in both economic and social development of South Africa. As part of the International Comparative Social Enterprise Models (ICSEM) project, this paper contributes to our understanding of the geographically distinct manifestations of social enterprise in South Africa. At the same time, it aims to present a research agenda in order to move social entrepreneurship in South Africa forward.

**Key words:** Social entrepreneurship, South Africa, legal forms, typology, policy context

## INTRODUCTION

The concepts of “social entrepreneurship” and “social enterprise” have attracted increasing worldwide interest in the last three decades. Especially in the Western context, increased scholarly attention has been given to this phenomenon (Borzaga and Defourny 2001; Nyssens 2006; Young 1983). While in the West it has spawned a lively academic debate and has led to the establishment of research centres, dedicated Chairs and specialised academic journals, much less is known about social entrepreneurship in other geographical, social, economic, and political contexts, such as those in developing countries. And it seems that the African continent again remains largely *terra incognita* as to who sets up and runs social enterprises, the entrepreneurs’ motivations, the constraints and barriers they encounter as well as the factors leading to the success (or failure) of these organisations. Considering the fact that social enterprises may have a strong developmental contribution to make (Seelos et al. 2006; Seelos and Mair 2009) to the lives of millions in developing countries, this neglect is all too sad. The present paper tries to contribute to filling this gap, by looking at the case of social entrepreneurship in South Africa. In particular, it aims to sketch an overview of the models of social enterprise in South Africa.

The remainder of this paper is structured as follows: First, I discuss the emergence of the concept of social enterprise in South Africa. The following section analyses the emergence of social enterprises out of a number of converging trends. I then turn my attention to the policy context as the background against which these models and processes need to be understood. The second major part of this paper then proposes a (crude) typology through a discussion of the various ways of incorporation of social enterprises in South Africa. The paper ends with a discussion of possible avenues of research that can push the boundaries of our current knowledge of social enterprise in South Africa. I call for both rigorous and systematic empirical and theoretical work that is grounded in the realities of the country in order to strengthen sound policy decision-making as well as effective organisation and management of these organizations, which can play a crucial role in both economic and social development of South Africa.

## PART A: UNDERSTANDING CONCEPTS AND CONTEXT

### The concept of social enterprise in South Africa

Visser (2011) attributes the low prevalence of social enterprises in South Africa, *inter alia*, to a lack of understanding of the concept. As is the case across many countries, there is no generally accepted definition in South Africa of what constitutes a social enterprise. A variety of reasons may account for this lack of a commonly agreed upon definition of social enterprise. First and foremost, the concept of social enterprise remains elusive, with a number of definitions and typologies circulating in academic circles (Defourny and Nyssens 2010; Gordon 2015). Defourny and Nyssens (2010) distinguish three main schools of thought.

The first school of thought mainly defines and distinguishes social enterprises from other non-profit organisations in terms of earned-income strategies. As Defourny and Nyssens (2010) point out, the bulk of publications subscribing to this school is based on non-profit organisations’ interest to become more commercial in order to diversify their funding base in support of their social mission. They further distinguish two sub-types within this definition, namely the “commercial non-profit approach” and the “mission-driven business approach”. The latter also encompasses all organizations that trade for a social purpose, including for-profit companies.

The second school of thought identified by Defourny and Nyssens (2010) puts the emphasis on social entrepreneurs in the Schumpeterian meaning of the term. Here non-profit entrepreneurs are seen as change makers that introduce social innovations in order to address social problems. The focus in this social innovation school of thought is more on outcomes and social impact rather than on the question of how income is generated.

The third school of thought is the EMES approach to social enterprise. The main difference with the two schools briefly discussed above is that the EMES approach stresses specific governance models, rather than the profile of social entrepreneurs (Defourny and Nyssens 2010). More particularly, the EMES approach emphasises democratic control and/or a participatory involvement of stakeholders, in the line of the tradition of the cooperative movement in Europe.

In addition to the divergent academic definitions of social enterprise, there exist a wide number of definitions put forward by practitioner organisations, such as Ashoka, the Schwab foundation and others. These definitions and conceptualisations are further complemented by a number of national and supra-national definitions, such as the definition given by the UK Department of Trade and Industry (Department of Trade and Industry 2002) or the EU (European Commission 2011).

Returning to the conceptual landscape in South Africa, Littlewood and Holt (2015: 6-7) offer an overview of different conceptions of social enterprise that can be found in various practitioner, policy and academic publications in South Africa. In the narrow sense of the term, they argue, social enterprise is used to describe a type of organisation that exists in the social and solidarity economy, but which is distinct from other types of social economy actors. In this way it becomes an umbrella term encompassing such organisational entities as NGOs, CBOs, non-profit companies and cooperatives. In a broader sense, the term is also used to denote an activity or practice that also encompasses phenomena like social intrapreneurship, hybrid partnerships, and shared value or bottom-of-the-pyramid initiatives. The confusion about what constitutes a social enterprise is also exacerbated by the inclusion of small, micro- and medium-sized enterprises (SMME) under the same banner. Further debates also include organisations in the informal economy as falling within a broader conception of social enterprise.

In line with Littlewood and Holt (2015), Ramos (2015) provides an overview of the most used definitions of social enterprise in South Africa, together with some of the key variables included in the definitions (see Table 1 below). While a more fine-grained analysis of definitions might be useful, some interesting trends do seem to emerge by looking at a number of these influential definitions. When we compare this table with the three schools of thought outlined by Defourny and Nyssens (2010), we notice that these definitions tend to cluster around the earned-income and social-innovation schools of thought. The absence of emphasis on modes of governance might be explained by the wide variety of organisations that the different definitions try to encompass. This could be explained, on the one hand, by the lack of a clear and coherent legal framework governing social enterprise in South Africa. On the other hand, this orientation of definitions towards a more US-directed perspective might also be accounted for by the early presence, in South Africa, of organisations such as Ashoka. The fact that the concept is still in its infancy in South Africa<sup>1</sup> might be a further contributing factor.

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<sup>1</sup> Outside of large metropolitan areas such as Johannesburg or Cape Town, the phenomenon of social enterprise is a concept that is only now slowly on the rise. It should be noted here that the *practice* of social entrepreneurial approaches, however, might have been around for already much longer.

Table 1: Definitions of social enterprise

Author / Organisation	Definition	Key variables
ILO (2009)	<i>"A social enterprise's primary objective is to address social problems through a financially sustainable business model where surpluses (if any) are mainly reinvested for that purpose."</i>	# Social purpose # Sustainable business model # Surpluses reinvested
Steinman (2010)	<i>"A social enterprise's primary objective is to ameliorate social problems through a financially sustainable business model, where surpluses (if any) are principally reinvested for that purpose."</i>	# Social purpose # Sustainable business model # Surpluses reinvested
Fury (2010)	<i>"A South African social enterprise: 1. Has a primary social purpose – has a clearly stated social purpose as its core objective; 2. Uses a financially sustainable business model – has a realistic prospect of generating sufficient income to exceed costs, now, or at some point in the future; and 3. Is accountable and transparent – has a mechanism for ensuring accountability to its beneficiaries."</i>	# Social purpose # Sustainable business model # Accountability # Transparency
ILO (2011)	<i>A social enterprise is "[an] organization that has a market orientation but exists to address a social or environmental issue."</i>	# Market orientation # Social mission
ASEN (2014)	<i>Social enterprises are "organisations [that] social entrepreneurs have established to put their innovations into practice. In its broadest sense social enterprise can refer to small community enterprises, cooperatives, NGOs using income-generating strategies to become more sustainable, social businesses or companies that are driven by their desire to bring social or environmental change."</i>	# Innovation # Small community enterprises + cooperatives + NGOs # Sustainability # Social and environment change
SEA (2014)	<i>"This is a way of doing business that makes positive social and/or environmental changes. Social enterprises believe there are other things as important as making profit. These may include working with homeless people, or young people who have problems, or helping the world's poorest people get out of poverty. There may also be an environmental element to it, such as encouraging people to recycle. Social enterprise is a general term which covers lots of types of business, or ways of working."</i>	# Social mission # Environmental element
The Bertha Foundation (2014)	<i>Social enterprises are "[business] models that provide affordable services to the world's poorest communities, or which illustrate an environmental impact at the core of their business."</i>	# Business model # Environmental impact

Source: Adapted from Ramos (2015).

In contrast to the more generic definitions highlighted in Table 1, Fury (2010) proposes a definition that is focused on some elements that she considers important when trying to define social enterprises within the South African context. Interestingly, her definition also includes a governance aspect, emphasising issues of accountability and transparency (while at the same time losing the social innovation aspect in the definition). The above discussion shows that in South Africa, as in many other places around the globe, no consensus has emerged yet on a clear-cut and unambiguous definition of what types of organisation are social enterprises.

## The emergence of social enterprise in South Africa

Social enterprise can be said to have a long history in South Africa, even if the term itself may be a more recent phenomenon (Littlewood and Holt 2015). The emergence of social enterprise in South Africa can indeed be traced back to colonial times, with the introduction of cooperatives. Like in many other African countries, cooperatives in South Africa are not indigenously grown institutions, but were introduced by the colonial administration (Hussi et al. 1993). Under apartheid, there was a dual development of the cooperative movement in South Africa with, on the one hand, those cooperatives that were geared at serving the interests of the “white” communities and, on the other hand, those that served “black” and “coloured” communities. While the former benefited from a range of government support initiatives, the latter did not have access to the same cooperative system (the dti 2012). In this regard, the cooperative sector in South Africa emerged with the establishment of the predominantly white agricultural cooperatives, aimed at developing and building the white farming community. Eventually, these would develop into powerful business ventures, controlling a large proportion of agricultural production, marketing and processing in rural areas (the dti 2012).

In the late 1970s and 1980s the country implemented a reform that entailed a democratization of the political and social life as well as deregulation and privatization of the economy. This liberalisation opened up the room for the birth of new forms of production, such as worker cooperatives. This meant that black cooperatives could be formed in townships and in the Bantustans (the “homeland” areas set aside for black inhabitants as part of the policy of apartheid). They did, however, not enjoy sufficient legislative and economic support, as compared to white cooperatives, due to apartheid policies (Khumalo 2014). In practice, these early black cooperatives emerged as a survival effort by the disadvantaged populations. Despite the disruptive policies of the apartheid regime, today there are about 800,000 active *stokvels* (mutual savings and credit schemes and burial societies) in South Africa, with a total membership of approximately 10 million people, representing a formidable economic force (the dti 2012).

During the 1980s, cooperatives began to be recognised by civil society as a tool for alleviating economic and social deprivation among the very poor (the dti 2012). This has continued up to present times. Since the democratisation in the early 1990s, the South African government has been heavily committed towards the promotion of cooperatives as a tool for post-apartheid reconstruction and development, with a number of policies and governmental institutions that support—directly and indirectly—the cooperative sector (the dti 2012). In this regard, the promulgation of the new Cooperatives Act of 2005 facilitated a boom in the registration of new cooperatives. However, despite this spike in new registered cooperatives, the number of actually operational cooperatives remains quite low: only about 10% (or about 2,600 coops) of the total number of registered cooperatives seem to be active. This could be attributed to such factors as

the recent global recession and the decrease in support, training and resources, which, in effect, increased the vulnerability of these organizations and their capacity to withstand competition from private businesses (Twalo 2012).

Historically, the NPO sector in South Africa has been relatively strongly developed in comparison to other African countries. It was shaped by the corporatist tradition of the Dutch settlers and the self-help spirit (often referred to as *Ubuntu*) of the indigenous peoples (Swilling et al. 2004). As Visser (2011) suggests, social entrepreneurship emanated in the 15-year period predating the fall of the apartheid regime in 1994, with organisations set up to tackle some of the social issues faced by disadvantaged and disenfranchised communities. As was the case with cooperatives, discussed above, under the apartheid regime, social welfare services reflected the racial policies set by the government. Part of the third sector was thus intimately connected with the state apparatus and aimed at maintaining the status quo (Chetty 1999; Habib and Taylor 1999; Patel et al. 2012; Swilling and Russell 2002). At the same time, however, this meant that those groups who were denied access to government support were forced to rely on their own (mostly informal) networks of social support. This would eventually play an important role in the political and social mobilisation during the years of the struggle against apartheid (Swilling et al. 2004). This meant that, by the time of the transition to democracy, in the early 1990s, South Africa had a sizeable third sector that was dominated by service activities alongside a relatively large amount of more advocacy-oriented organisations (Swilling and Russell 2002).

Following the democratic transition, civil society had to redefine itself in the face of the developmental challenges the new state was facing (Steinman and van Rooij 2012). As Schneider and Gilson (1999) pointed out, the normalisation of political life in 1994 led to a number of major changes in donor flows to South Africa. One aspect of these changes was a shift in interest of international donors, from funding NGOs towards supporting and funding the newly elected democratic government. This resulted in a profound crisis in the sector (Patel et al. 2012), which had to change from a welfare movement, initially established as a result of voluntary activity and mutual assistance, to direct service delivery (Taylor 2013). As Chetty (1999: 70) argues, “the growth, professionalization, and diversification of welfare services [...] have demanded the establishment of a management infrastructure suited to the professional requirements of the services.”

In this regard, Claeys and his colleagues highlighted a shift observed in the organisations participating in their studies, from “do-good organisations” to becoming more business-like in the way they are running their activities (Claeys 2011, 2014; Claeys and Jackson 2012; Claeys and van Meurs 2013). This shift can be explained by a number of converging factors. First, there was a change in the global discourse surrounding international development, which emphasised increased performativity (Lyotard, 1984; Fournier and Grey, 2000) in development interventions (Gulrajani 2011; McCourt and Gulrajani 2010; Murphy 2008). This changing discourse also affected organisations implementing development interventions on the ground through changes in donor requirements, which forced organisations to professionalise (Claeys 2014). Secondly, the funds which donors made available have been dwindling, meaning that organisations on the ground need to find other ways to ensure the survival and sustainability of their activities. This has led to organisations seeking to pursue income generation activities in order to replace the funds that were no longer available through traditional charitable or other channels (ILO 2013). At the same time, companies reduced the funds they could make available through corporate social investment (CSI) activities, because of the global financial meltdown

and the consequence this had on corporate profits. In addition to “donor fatigue”, some respondents also highlighted a phenomenon of “NGO fatigue” (Claeyé, unpublished research; see also Taylor 2013), related to the fact that NPOs were perceived as not being able to deliver on the promises made to communities. This, again, diverted funds from the third sector. In response to the above, many NPOs turned to income-generating activities to sustain their operation. Finally, one may also point at a fashion phenomenon that emerged in the last decade, whereby social entrepreneurial activities seem to have gained increasing credit, as this type of development activities seemed to respond better than other activities to some donors’ requirements in terms of performativity and sustainability (Claeyé, unpublished research). In this sense, it seems fashionable to set up a social enterprise rather than a traditional NPO. These converging developments have created a fertile ground for more business-like NPOs and social enterprises to emerge.

While many organisations might have been engaged in what we would describe today as social entrepreneurial activities for two or three decades (with the exception of cooperatives, which, as we saw above, have a longer history), Littlewood and Holt (2015) pinpoint the 1990s as the decade where social enterprise started to sprout in South Africa. They point, for example, at the arrival of Ashoka in 1991. However, it was only in the last years of the first decade of the new millennium that organisations such as the now defunct African Social Enterprise Network (ASEN) and the Social Enterprise Academy (SEA) emerged. At the same time, academic interest in the phenomenon was institutionalised in such research centres as the Centre for Social Entrepreneurship and the Social Economy (CSESE) at the University of Johannesburg or the Bertha Centre for Social Innovation and Entrepreneurship at the University of Cape Town’s Graduate School of Business, and through the establishment of the first university-accredited programme in social entrepreneurship in Southern Africa (Social Entrepreneurship Certificate Programme – SECP) at The Gordon Institute of Business Science of the University of Pretoria. As noted above, it should be remembered that while the concept of social enterprise might indeed have taken root in the more urbanised/metropolitan centres, social entrepreneurship remains a relatively new concept in remote areas—the further away we go from these metropolitan centres, the less known the concept. A quick glance at the Ashoka Fellows for South Africa reveals that a large part of the fellows is situated in the largest metropolitan areas (<https://www.ashoka.org/fellows>).

The academic, practitioner and policy interest in social entrepreneurship reflects developments that probably started earlier and were picked up and institutionalised in the first decade of the new millennium, due to the convergence of a number of mutually reinforcing developments. These include a revival of the cooperative movement in South Africa and the professionalization of NPOs in the face of the changing funding landscape.

## South African policy context

As stated earlier, South Africa does not have a legal framework specifically governing social entrepreneurship *per se*. Nevertheless, a number of policy initiatives have been launched that are relevant to our purposes here. In the present section, I will highlight a number of these policies and initiatives—more particularly those policies and initiatives related to strengthening and developing the social economy, cooperatives, small-, micro-, and medium-sized enterprises (SMMEs), and local economic development (LED).

## *Social economy-related policies and initiatives*

While the concept of social economy only entered the public discourse at the turn of the first decade of the new millennium, the new democratic South Africa had already embraced a people-centred approach to development, through the Reconstruction and Development programme (RDP) that was introduced in 1994. The social democratic view embedded in the RDP quickly faded into the background with the introduction of the Growth, Employment and Redistribution Programme (GEAR) in 1996, which shifted the policy focus towards a neo-liberal growth path (Seekings and Nattrass 2005; Taylor 2007). Whatever position one wishes to take with regard to these early policies and their social and economic impacts, the fact remains that South Africa today is faced with high unemployment rates and high levels of inequality between the different social groups. While, as explained above, the third sector has always played an important role in the South African landscape in fighting poverty and inequality, the notion of social economy and more specifically its potential for job creation first entered the public discourse at the end of the noughties. The International Labour Organisation (ILO) has been instrumental in promoting the concept and helping it to enter the political lexicon. This was, *inter alia*, realised through its conference, entitled “The social economy: Response to the global crisis”, which took place in Johannesburg in 2009, and through a high-level study visit of a number of South African policy makers to Belgium and the UK, organized with the aim of exposing them to “a range of policy options and supportive measures for social enterprise, and demonstrating the importance attached to social enterprise by policy makers in both countries” (ILO 2009: 5).

The failure of the ruling African National Congress (ANC) government to find sustainable solutions to the social and economic challenges it inherited after the fall of apartheid, together with the effects of the global financial crisis, prompted a policy shift in the first decade of the new millennium that translated into the New Growth Path (NGP), which was launched in November 2010 (Satgar 2014). The social economy is seen as a crucial component in attaining the NGP goal of creating five million jobs by 2020. Therefore, the NGP aims at supporting and strengthening the social economy by developing

*a strategy to support social economy organisations amongst others in obtaining marketing, bookkeeping, technological and financial services and training, and in developing linkages within the social economy to encourage learning and mutual support; work with union and community investment companies to develop a Charter with commitments to job creation; encourage state procurement from and service delivery through organisations in the social economy.*

(Economic Development Department 2010: 75).

While the social economy might now be part of the policy lexicon, the NGP has, to date, done very little to materialise on its lofty promises. One exception to this might be the efforts made to support and develop the cooperative sector.

Consultative processes between the government of South Africa, the ILO, businesses and other social partners culminated in the South Africa Decent Work Country Programme (DWCP-SA), which was carried out between 2010 and 2014. Within the DWCP-SA, the social economy is identified as an important contributor to the creation of productive and decent jobs, and cooperative enterprises and social businesses are explicitly named as “one of a variety of viable

and sustainable economic enterprises that can help to alleviate pressure on the local labour market” (Republic of South Africa and ILO 2010: 28).

### *Cooperative-related policies and initiatives*

One of the most tangible outcomes of the implementation of DWCP-SA was the Co-operatives Amendment Act 2012, which was signed off by the President in August 2013. The Act essentially aimed at decreasing the failure rate of cooperatives, and at addressing past problems in cooperative governance, structures, compliance and sustainability. It also established a Cooperatives Development Agency, which is tasked with boosting and supporting the further development of cooperatives through financial and non-financial support (Republic of South Africa 2013). As Wessels and Nel (2016) underline, the prevailing discourse of the South African government is that cooperatives have a key role to play in the development of the nation through their potential to create jobs. This discourse translates into a number of initiatives aimed at supporting and developing the cooperative sector. In addition to the Agency mentioned above, Wessels and Nel (2016) highlight the existence of various state initiatives and support mechanisms, such as the Cooperative Development Policy (2004) and the establishment of a Cooperative Banks Association (2007) and an Integrated Strategy on the Promotion and Development of Cooperatives. Direct financial and advisory government support, they continue, is channelled through the Department of Trade and Industry (the dti), the Small Enterprise Development Agency (SEDA), the Umsombomvu Youth Fund, the National Development Agency, the Micro Agricultural Finance Scheme and the Micro-Finance Apex Fund. Finally, Wessels and Nel (2016) point at the establishment of the National Community Development Worker Programme and the Community Practitioner Programme, which employ 6,000 community workers to support cooperatives.

### *SMME-related policies and initiatives*

A third policy area of interest to our current discussion is the field of entrepreneurship, and more specifically policies aimed at supporting and developing the SMME sector. SMME-related policies are important in our discussion of social entrepreneurship in South Africa, as programmes for nurturing the SMMEs are seen as an important approach to addressing poverty and inequalities through strengthening the coping strategies of poor households (Rogerson 1999) and eventually contributing to economic growth. Since the democratic regime was established, in 1994, the South African government has implemented a number of policies and initiatives to boost the creation and development of small enterprises (Cassim et al. 2014; Ligthelm 2010; Rogerson 2004, 2006, 2008). Within the macro-economic context provided by the GEAR strategy, a framework focussing on SMMEs was set forth in a White Paper published in 1995 (Rogerson 2004). This landmark White Paper on *The National Strategy for the Development and Promotion of Small Business in South Africa* was the first outline of such a policy in post-apartheid South Africa. This White Paper clearly underlines

*that the small business sector plays a crucial role in peoples' efforts to meet basic needs and help marginalised groups—like female heads of households, disabled people and rural families—to survive during the current phase of fundamental structural changes where the formal economy is unable to absorb the increasing labour supply, and social support systems are grossly inadequate.*

(Department of Trade and Industry 1995: 11)

As such, SMMEs were given a key role in the reconstruction of the country after decades of crippling apartheid policies. Within this framework, SMMEs are seen as a crucial element in helping to tackle development problems (including the high unemployment crisis), alleviate poverty and help incorporating informal organisations into the formal economy (Rogerson, 2016). This role was further reinforced with the establishment of the Department of Small Business Development (DSBD) in 2014. As per its website ([www.dsbd.gov.za](http://www.dsbd.gov.za)), this newly formed department is tasked with the responsibility to lead an integrated approach to the promotion and development of small businesses and cooperatives through a focus on the economic and legislative drivers that stimulate entrepreneurship to contribute to radical economic transformation. The realisation of this mandate is expected to lead to increased employment, poverty reduction and reduced inequality (Department of Small Business Development, n.d.).

While not *per se* referring to social entrepreneurial activities, the 1995 White Paper clearly underlines the necessity to be able to foster organisations that meet the basic needs of marginalised groups in society. More importantly, the White Paper paved the road for other initiatives at the national, provincial and local level (Rogerson 2004) that today are still not necessarily geared at social enterprises, but which may be seen as a resource in strengthening the field of social entrepreneurial activities. Some examples include SEDA, the National Youth Development Agency (NYDA), the Community Self-Employment Centre (COMSEC) and the Industrial Development Corporation (IDC), all of which have shown interest in social enterprise development (Fury 2010). In 2013 the IDC launched, in collaboration with the Flemish Department of Foreign Affairs (Belgium), the Social Enterprise Fund (SEF). An initial amount of ZAR 120 million<sup>2</sup> was committed to capitalize the fund over the following five years, to which the Flemish Government contributed EUR 4 million in 2013-2014 (Departement Internationaal Vlaanderen, n.d.). The aim of the SEF is to focus on supporting social enterprises that will benefit and contribute to the sustainable well-being of marginalised communities as well as to the transformation of the South African economy as a whole (Departement Internationaal Vlaanderen, n.d.). The IDC 2015 Annual Report states that SEF supported ten social enterprises during the fiscal year 2014/2015 with awards of nearly ZAR 35 million (IDC 2015). Since its inception, in 2013, SEF has disbursed almost ZAR 88 million in support of 29 social enterprises across South Africa (IDC 2013, 2014, 2015).

### ***LED-related policies and initiatives***

A final set of policies that are relevant to our present discussion are those related to local economic development (LED). As Nel and McQuaid (2002: 60) point out, in South Africa, decades of apartheid stifled most forms of community initiative, including those in the field of economic development. Grant and Dollery (2010, as cited in Rogerson 2011) contend that one of the most important shifts in public administration after 1994 has been the growth of LED planning, which has been a critical dimension of restructuring local government. The notion of LED was firmly entrenched in the 1998 *White Paper on Local Government* (Republic of South Africa 1998), which elevated LED to an obligatory mandate for all South African local authorities (Rogerson 2011) and indicated a number of developmental imperatives, which included maximisation of social development and economic growth of communities (Republic of South Africa 1998). Though not exclusively focused on pro-poor growth, the reformulation of LED in

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<sup>2</sup> ZAR 1 is about EUR 0.0654 (exchange rate as of November 16, 2016).

the mid-2000 did reinforce the focus on poverty alleviation within LED (Nel and Rogerson, 2016). Of particular interest to our discussion here are the results of Nel and Rogerson's (2016) desktop survey of the LED strategies currently pursued across South African municipalities. Their data seem to suggest that the most common pro-poor interventions pursued include support for cooperatives and SMMEs, as these organisations are seen as the core basis for job creation in LED (Rogerson 2011). This is especially true for the smaller urban centres. While social enterprises are but a sub-set of these types of organisations, the above does suggest that there is potential for the growth of these types of organisations within this policy framework as well. This is even more so true since organisations like SEDA and IDC, which have stated an interest in social entrepreneurship (Fury 2010) play an important role within LED. Furthermore, South Africa is adopting business incubation as part of national and local initiatives to strengthen the small enterprise economy (Masutha and Rogerson 2015) in which, amongst others, SEDA and IDC play an important role.

In addition to the above, there are a number of other policies that might have an impact on the development of the field of social entrepreneurial activity in South Africa, such as the Broad-Based Black Economic Empowerment (B-BBEE) Code of Good Practice. According to Steinman (2010) this code would favour social enterprises and would be among the most enabling factors for social enterprise development in South Africa. In addition to this, a number of business development agencies—such as The Business Place, The Opportunity Exchange, Social Incubators, The Greater Good South Africa, UnLtd South Africa or Echoing Green—are already in place and deliver financial and non-financial business development services to potential social entrepreneurs.

## **PART B: IDENTIFICATION OF SOCIAL ENTERPRISE (SE) MODELS**

This section will discuss various organisational forms of social enterprise in South Africa. Due to the scarcity of available documentation, this section draws mainly on the work done by the International Labour Organisation (ILO) within the framework of their Social Entrepreneurship Targeting Youth in South Africa (SETYSA) research project (Legal Resources Centre 2011; Steinman 2010). In contrast to the framework proposed by Littlewood and Holt (2015), who adapt a stakeholder approach, I am taking a more legal approach in presenting a typology of social enterprises in South Africa. While social entrepreneurship has enjoyed heightened attention by the government, to date no single regulatory framework exists that governs social enterprise in South Africa (Lambooy et al. 2013; Urban 2013). This means that social enterprise in South Africa is, as discussed above, governed by a plurality of existing policies, regulations and initiatives, which shape and affect the environment and potential for social enterprise development in South Africa. These include laws relating to the registration and obligations of companies and non-profit organisations; tax law; Broad-Based Black Economic Empowerment (B-BBEE); corporate social investment (CSI), etc. Hence, as Fox and Wessels (2010) indicate, social enterprises in South Africa currently exist under a variety of legal forms.

As Steinman (2010) points out, the size and complexity of the organisation, as well as the requirements of potential funders, are determining factors when choosing a legal form. In addition to tax considerations, financial reporting requirements and the types of finance that are available (GreaterCapital 2011), the choice for incorporating the organisation as a for-profit or not-for-profit entity sends out a message about how it operates. Social entrepreneurs may choose consciously to be incorporated as a for-profit entity in order to stress their business-like

characteristics, like efficiency and accountability, whereas others may opt for a non-profit form to clearly outline their dedication to the social purpose for which the organisation was established (Legal Resources Centre 2011). A variety of personal, contextual and socio-economic factors will thus have an influence on the choice of one form or the other.

With regard to the legal forms under which social enterprises may be incorporated in South Africa, the Legal Resources Centre (2011) makes a distinction between not-for-profit models, for-profit models and hybrid models. We will discuss each of these models together with the regulatory frameworks that govern their operation.

## **Not-for-profit models**

The primary aim of not-for-profit entities is to provide services with a social orientation to communities or society at large, as stated in their social objective. Traditionally, these organisations depend on donor funding to support their operations; they may engage in income-generating activities, but private ownership or the distribution of profits is not permitted. On dissolution, these entities are required to donate any surplus assets or money, after payment of debts, to another not-for-profit entity with similar objectives (Legal Resources Centre 2011).

While, when talking to practitioners, the term “non-profit organisation” (NPO) is often used, this terminology does not refer to a legal form, but to a specific legal status for which separate registration is required (Legal Resources Centre 2011). Similarly, the label “public benefit organisation” (PBO) has a specific meaning: it refers to an organisation that qualifies for tax exemption on the basis on its “public benefit activities” (Legal Resources Centre 2011). Not-for-profit entities can apply separately for tax advantages under the provisions of the Income Tax Act and related legislation. This means for example that a trust or a voluntary association could register both as an NPO and a PBO as long as it meets the prescribed regulatory requirements (Legal Resources Centre 2011). Organisations having a PBO status are allowed to trade, but their commercial activities can only occur within a strict set of parameters and must be in direct relation with the public benefit activity of the organisation. The time and resources devoted to commercial activities should not exceed 15% of the organisation’s activities. Most trading should occur based on the notion of cost recovery and it may not pose unfair competition to taxable entities undertaking the same kind of activities (ILO 2013).

Among the not-for-profit models, we can distinguish between voluntary associations, trusts, and non-profit companies (previously known as “Section 21 companies”), each of which are governed by different legal and regulatory frameworks. We will discuss each of these in more detail below.

### ***Voluntary associations***

Voluntary associations (VAs) make up over 94% of all registered not-for-profit entities in South Africa (DSD 2015). While not exclusively, VAs are typically micro-organisations with very limited financial resources and human capital, and with low survival rates. VAs are established under Common Law and are also governed by the NPO Act 71 of 1997. VAs can be created when three or more people enter into an agreement—which can be solely verbal—to work together with a view to achieving a not-for-profit objective. As VAs, as just mentioned, can be created under Common law, it is not required that they register with a government registry to come into

existence. Under the common law, a VA must meet three requirements to have legal personality: 1) have perpetual succession;<sup>3</sup> 2) be able to hold property that is distinct from its members'; 3) stipulate that no member has any rights, by reason of his/her membership, to the property of the VA (Wyngaard 2009). No public authority regulates the way in which a VA conducts its affairs. For this reason, VAs are encouraged to register with the NPO Directorate, so they become accountable to the ongoing regulatory requirements of the NPO Act 71 of 1997. This registration with the NPO Directorate ensures that a VA has/is regarded as having a distinct legal identity, separate from that of its members: as per Section 16 of the NPO Act, the certificate of registration of a non-profit organisation, or duly certified copy of the certificate, is sufficient proof that the organisation is a body corporate. It is important here to note that there are plans underway to change the NPO Act (Hendricks and Wyngaard 2013). Changes include the proposed establishment of the South African Non-profit Organisations Regulatory Authority (SANPORA) as a centre piece of the Department of Social Development's Policy Framework on the NPO Law Reform. At the moment of writing, though, the implications of these changes are unclear, and any speculations regarding their impact would be premature.

Turning to the organisational side of setting up and running a VA, depending on the needs and objectives of the VA, the members wishing to establish a VA can draw up a constitution. This constitution governs the agreed rules and aims so as to clearly define how the Association functions, how it is to be managed and how decisions are to be made (Legal Resources Centre 2011). VAs form an independent legal entity and the constitution must specify how the VA will continue to exist when its membership changes ("perpetual succession"). It must also state that the assets and liabilities of the association will be held separately from those of its members.

In terms of income, VAs, like trusts and non-profit companies, can draw on grants and donations that are only available for not-for-profit entities. These include *inter alia* funding through Corporate Social Investment (CSI) and B-BBEE, and funding from government departments that will only provide funds to registered NPOs (Legal Resources Centre 2011). As stated above, a VA is allowed to conduct activities to make some profits, as long as its main objective is not the acquisition of gain. In addition to grant funding, donations (both in kind and money) or earned income, Everatt and colleagues (2005) highlight the importance of volunteerism as a form of resources on which VAs and other non-profit organizations can draw.

At present, the prevalence of social enterprises among this type of organisations is unknown. Based on my experience and research on social enterprises and non-profits in South Africa, my informed guess would be that this is not the typical organisational form social entrepreneurs would adopt. However, this is pure speculation and needs to be corroborated by more systematic research into the organisational forms social enterprises might adopt.

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<sup>3</sup> This notion is explained below.

## *Trusts*

Trusts make up less than 2% of the non-profit landscape in South Africa (DSD 2015). Trusts can be established under Common Law and under the Trust and Property Control Act 57 of 1988. In essence, a trust is a written deed or agreement, written and attested by a notary public, between an owner and trustees. The aim of this transfer of property and/or funds is for the trustees to administer the assets for the benefit of a third party—the beneficiaries—or a stated objective. Trusts are to be registered with the Master of the High Court, who oversees and controls the appointment of trustees. In practice, however, this supervision is limited and in most cases the Master will only comply with its oversight mission when a complaint is lodged (Legal Resources Centre 2011).

While trusts may vary enormously in terms of size, objectives, organization and procedures, all trust deeds are expected to contain clauses with regard to the trust's main purpose and objectives, its governance structure, meetings and procedures, the rights and duties of the trustees, the appointment and removal of the board of trustees as office bearers, dissolution procedures, financial guidelines, powers and authority of the board of trustees and dispute procedures (Legal Resources Centre 2011).

Unlike VAs, trusts do not have an independent legal personality. However, when a trust registers as an NPO under the NPO Act (in addition to registering with the Master of the Court), it becomes a body corporate with independent legal personality (Steinman 2010). One implication of this lack of independent legal personality is that, in case of legal dispute, the trustees can sue or be sued in their own capacity and not in the trust's name (Legal Resources Centre 2011). Trust property, however, enjoys protection under the Trust Property Control Act, and as such is ring-fenced from trustees' personal property.

The trust is run by a trustee or board of trustees, who act in accordance with the powers and duties set out in the trust deed (Steinman 2010) so as to enable them to achieve the objectives of the trust. The powers and duties are quite similar to the powers bestowed on directors in a traditional for-profit company (Legal Resources Centre 2011). Similarly, like in the agent/principal relationship in for-profit companies, trustees are expected to act conscientiously with a view to achieving the (social) objectives of the organisation. Depending on what has been specified in the trust deed, they may receive payment for their work for the trust.

Like other not-for-profit entities, trusts may engage in subsidiary trading activities in order to increase revenues for the smooth operation of the organisation. Like in the case of non-profit companies, trading beyond the social purpose or public benefit will be taxed normally.

Much in the same vein as what was said above about possible social entrepreneurial activities in VAs, there are no data available as to the prevalence of social enterprises amongst this type of organisations; again, more research would be needed to assess this.

## *Non-profit companies (NPC)*

Non-profit companies (NPC) represent almost 4% of the third sector in South Africa. The new Companies Act 71 of 2008, which was signed into law in April 2009 and entered into force

on May 1, 2011, has changed the way in which non-profit companies are incorporated and regulated. The new Companies Act distinguishes two broad categories of companies: non-profit companies, and profit companies. The latter encompasses state-owned companies, private companies, personal liability companies and public companies (Lambooy et al. 2013; Legal Resources Centre 2011), which will be discussed in more detail below. As to the newly created category of non-profit companies, it replaces the old “Section 21 companies”. NPCs must comply with two key criteria: (a) they must be formed for a public benefit object or an object relating to cultural or social activities or communal or group interests; and (b) the income and property of the company is not distributable to its incorporators, members, directors, officers or persons related to any of them (Cassim 2012; Legal Resources Centre 2011). In line with this explicit limitation of its purpose, a non-profit company is subject to a modified application of the New Act; these rules are set out in a separate schedule. A NPC is also exempt from many of the parts and sections of the New Act applicable to their for-profit counterparts (Cassim 2012).

NPCs have an independent legal personality and can, thus, be sued or sue in their own name, and they can own assets (Legal Resources Centre 2011). In addition to the non-distribution constraint, a certain degree of asset-lock is provided for in the Act. As Schedule 1 (“Provisions concerning non-profit companies”) states:

*A non-profit company may not—*

- (a) amalgamate or merge with, or convert to, a profit company; or*
- (b) dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the non-profit company.*

(Republic of South Africa 2008)

Non-profit companies come into being through a Memorandum of Incorporation completed and signed by at least three persons, the incorporators. These incorporators need not be members of the non-profit company. The Memorandum sets out the rights, duties and responsibilities of its members and directors and makes provisions for financial control and reporting.

A non-profit company is not required to have members (“members” being understood here as the equivalent of shareholders in for-profit companies). If it chooses to have members, it may distinguish between voting and non-voting members. Members do not necessarily have to be individuals. For-profit organisations, other charities or any other legal persona can be a member of the non-profit company. The voting members of the non-profit company elect the directors, as specified in the founding Memorandum of Incorporation. If the organisation does not have members, the Memorandum must specify how directors should be elected by the board (i.e. the incorporators of the non-profit company) or other persons. Non-profit companies are required to have at least three directors. Like in other not-for-profit entities, directors are accountable to their board and are bestowed with the executive responsibilities and powers necessary to conduct the day-to-day business of the organisation, which they are expected to carry out “in good faith and for a proper purpose in the best interests of the company with the degree of care, skill and diligence that may reasonably be expected of a person” (Republic of South Africa 2008).

Non-profit companies are allowed to make a profit insofar as they comply with the basic prohibition on distribution to their members and controllers, and provided that all their assets and income are used to advance the objectives stated in their Memorandum of Incorporation

(Cassim 2012; Legal Resources Centre 2011). In addition to the generation of earned income through commercial activities, non-profit companies can also seek grant funding and receive donations (Cassim 2012). For social enterprises, a typical advantage of the non-profit company form is that it has easier access to grants and donations than for-profit entities, as these are often only available to not-for-profit entities (Steinman 2010).

This type of organisations would fit closely with the profile of a “typical” social enterprise, as it combines the primacy of the social purpose with the possibility to generate trading income. Unfortunately, as was also the case for the VAs and trusts, we do not have any data with regard to the prevalence rate of social enterprises among this type of organisations. While one could suggest that, *in theory*, this could be an ideal form for social enterprises in South Africa, the absence of a legal framework as well as reasons linked to access to funding (both in addition to grants or philanthropy as well as seed capital), ideological concerns, etc. might dictate the adoption of other legal forms to incorporate a social enterprise.

## For-profit models

For-profit entities are characterized by the fact that they exist primarily to make a profit. Social enterprises adopting a for-profit form would be free to reinvest these profits in the social enterprise, or to use them in line with the enterprise’s aims and objectives in some other way (Legal Resources Centre 2011). This means that social entrepreneurs may well choose to incorporate as a for-profit entity with the aim of allocating the gains generated to the achievement of social objectives. As discussed above, such choice can also be made with the purpose of addressing a (rhetorical) statement to the outside world, emphasising the business-like running of the organisation. Once again, no reliable data are available to ascertain the prevalence of social enterprises among these types of organisation.

As per the Companies Act 71 of 2008, profit companies include state-owned companies, private companies, personal liability companies and public companies (Lambooy et al. 2013; Legal Resources Centre 2011). In this section, we will focus our attention on the latter three. In addition to these, we will briefly discuss close corporations, cooperatives and sole proprietorship. While under the Companies Act of 2008 it is no longer possible to register as a close corporation, pre-existing ones can continue to operate (Steinman 2010).

### ***Private companies ([Pty] Ltd), personal liability companies (Inc.) and public companies (Ltd)***

Both private companies (personal liability companies<sup>4</sup> will be discussed here as a subset of private companies as the main difference lies in the personal liability of present and past directors) and public companies are established under the Companies Act 71 of 2008 and allow for a group of people to work together towards a common objective. Without wanting to go too much into detail, the main difference between private and public companies relates to the restrictions placed on the offering and transferability of shares. Private companies are prohibited to offer securities to the public; the transferability of these securities is restricted to

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<sup>4</sup> This type of company is commonly registered by professionals such as doctors, lawyers, engineers, accountants, etc.

other members (shareholders) of the same private company. Public companies are not limited by these restrictions and allow for a more widely distributed ownership, and the trading of shares on a public exchange, such as the Johannesburg Stock Exchange (Legal Resources Centre 2011).

Both private and public companies have an independent legal personality. The founding document for both types of organisation is the Memorandum of Incorporation, which, similarly to that of not-for-profit entities, sets out the rights, duties and responsibilities of the shareholders, directors and others within and in relation to a company. While it is not restrictive with regard to the activities that can be carried out, the company has to set out its main objective in its Memorandum. It is possible for a public or a private company to have a social purpose (Steinman 2010). As Steinman (2010) points out, while it is not customary to do so, a company may voluntarily impose a restriction on dividends or on profit distribution to shareholders, and allocate its profits to the pursuit of a social purpose.

Private and public companies are funded through equity capital. As per the provisions contained in the Memorandum of Incorporation, the company may issue shares to its shareholders. These shares entitle their holders to dividends and other forms of profit distribution (subject to the solvency and liquidity of the company); to the return of capital; to surplus assets in the event of a liquidation, and to participation through voting rights (Steinman 2010).

In terms of governance, private companies must have at least one director, while public companies must have at least three directors. For both types of companies, a board of directors acts as an agent in governing the company in the name of the shareholders, as per the specifications laid down in the Memorandum of Incorporation.

### *Close corporations (CC)*

As pointed out above, the legal form of close corporation no longer exists under the Companies Act 71 of 2008. Nevertheless, we still wish to discuss briefly this type of organisation, as pre-existing close corporations—that is, those established before the new Companies Act entered into force on May 1<sup>st</sup>, 2011—can continue to exist. Close corporations will, therefore, remain part of the South African legal landscape until they are deregistered or dissolved in terms of the Companies Act or converted into other legal entities.

A close corporation is a separate legal entity, incorporated under the Close Corporations Act 69 of 1964. As Henning (2009) points out, this form offers a flexible freestanding limited liability vehicle for a single entrepreneur or a small number of participants. As such, it was a favoured way of incorporating small-, micro- and medium-sized enterprises (Chiloane-Tsoka and Rankhumise 2012). A close corporation can have between one and ten members. Companies and other legal persons cannot become members. The members are not in principle liable for the debts of the organisation, but there are certain instances where personal liability is used as a sanction for non-compliant behaviour. In principle, there is no separation between ownership and control. Every member is entitled to participate in the management of the business and to act as an agent for the corporation, and he/she owes a fiduciary duty and a duty of care to the corporation (Henning 2009).

With regard to the admission of new members, the consent of all the members is required. The new members obtain members' interests in exchange for their contributions to the close corporation. It is determined by agreement between him or her and the existing members, and the percentages of the interests of the existing members in the corporation are reduced proportionally by the percentage acquired by the new member. The contribution may consist of an amount of money, or of any property (whether corporeal or incorporeal) of a value agreed upon by the person concerned and the existing members (Republic of South Africa 1984). They can receive a return, similar to dividends, provided that the close corporation complies with the solvency and liquidity requirements (Steinman 2010).

Steinman (2010) indicates that as social enterprises, close corporations are in a situation similar to that of public and private companies, in that they can restrict dividends or payments to their members and so devote most of their income and assets to achieving a social purpose. Close corporations can be formed for social purposes and need not even pursue gain.

## *Cooperatives*

The cooperative movement has enjoyed increased interest over the last couple of years as cooperatives are seen as a driver of economic growth and social development (the dti 2012). Policy initiatives have led to a flourishing cooperative movement in South Africa, with almost 45,000 registered cooperatives in 2010/2011 (the dti 2012).

Cooperatives are established under the Cooperative Act 14 of 2005 and its Amendment in the form of the Cooperatives Management Act 6 of 2013. These Acts allow for a group of people to join forces to meet a common economic, social and cultural need (ILO 2013) through the pooling of their individual interests and expertise. The Acts provide for various forms and kinds of cooperative. They distinguish between primary, secondary and tertiary forms of cooperatives. According to the Cooperative Amendment Act, a primary cooperative means a cooperative whose object is to provide employment or services to its members and to facilitate community development. A primary cooperative is formed by a minimum of five persons, of two juristic persons, or of a combination of five persons, be they natural or juristic. A secondary cooperative is a cooperative formed by two or more primary cooperatives to provide sectoral services to its members. Finally, a tertiary cooperative is a sectoral or multi-sectoral cooperative whose members are secondary cooperatives and whose objectives are to advocate and engage with organs of state, the private sector and stakeholders on behalf of its members, in line with its sectoral or geographical mandate (Republic of South Africa 2005, 2013). The Acts also distinguish different kinds of cooperatives, such as housing cooperatives, worker cooperatives, financial cooperatives, agricultural cooperatives and social cooperatives (Republic of South Africa 2005, 2013).

Cooperatives have independent legal personality and come into being by registering a constitution with the Registrar of Cooperatives. This constitution must specify, among other things, whether the cooperative is a primary cooperative, a secondary cooperative, or a tertiary cooperative; it must define the main objectives of the cooperative; it must provide a description of the business of the cooperative (including any restrictions imposed on the business of the cooperative); it must specify the number of directors and the term of their office (which may not be more than four years), the conditions of appointment and whether a director may be re-appointed for a second or further term of office. The constitution must also define the powers—

and restrictions imposed upon these—of the directors of the cooperative to manage the business of the cooperative; the requirements for membership and termination of membership of the cooperative; the rights and obligations of members, etc.

As indicated above, a cooperative must have at least five members (be they natural or legal persons); there is no upper limit to the number of members it may have. Cooperatives must comply with seven cooperative principles. These are:

- 1) *Voluntary and open membership*: this means that cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without discrimination on the basis of race (*sic*), gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth;
- 2) *Democratic member control*: cooperatives are democratic organisations, controlled by their members;
- 3) *Member economic participation*: members must contribute equally, in amounts proportionate to their membership shares, and democratically control the capital of their cooperative;
- 4) *Autonomy and independence*: cooperatives are autonomous, self-help organisations controlled by their members. If cooperatives enter into agreements with other organisations, including governments, or raise capital from external sources, they should do so on terms that ensure that democratic control by their members is preserved and their cooperative autonomy maintained;
- 5) *Education, training and information*: cooperatives must provide appropriate education and practical training for their members, elected representatives and employees so that they can contribute effectively to the development of their cooperatives and are able to inform the general public, particularly young people and opinion leaders, about the nature and benefits of cooperation;
- 6) *Cooperation among cooperatives*: cooperatives must serve their members as effectively as possible and strengthen the cooperative movement by working together through local, national, regional and international structures where possible;
- 7) *Concern for community*: cooperatives must work for the sustainable development of their communities through policies approved by their members (Republic of South Africa 2005, 2013).

Cooperatives are managed by a board of directors, who are appointed for a period specified in the constitution. This board of directors is accountable to the general meeting and a supervisory committee, if such has been specified in the constitution. Members have equal voting rights. A cooperative must appoint an auditor to verify its financial statements.

The capital contributed by members may comprise entrance fees, membership fees or subscriptions, membership shares, member loans and funds of members. The law does not reserve a specific set or area of economic activities in which cooperatives should engage. This means that income may be generated from any legal commercial activity a cooperative wants to engage in. Members are able to declare dividends and are therefore able to obtain financial gain from a cooperative.

## *Sole proprietorship*

In addition to the above, owners of SMMEs might choose sole proprietorship. A sole proprietorship is the simplest kind of independent business, as it does not require registration as a legal entity. As such, it is not governed by the Companies Act (unlike the other organisations described above—with the exception of cooperatives). This organisational form is often adopted by a single owner, whether or not she or he employs or contracts other people during the course of her or his activities. Sole proprietorship is more common among service-based SMMEs as these usually require less investments and the debts are thus not so high. The owner is liable for, and can be sued for, the business's debts. There is no distinction between the business' assets and the owner's assets.

Again, it is unclear to what extent this form is prevalent among social entrepreneurs in South Africa and more systematic research is needed to identify which legal forms are adopted by social entrepreneurs and why.

The above entities represent the range of not-for profit and for-profit business models that may be used by social enterprises to fulfil their social purpose. More systematic research is needed to ascertain what type of incorporation social entrepreneurs might choose and for what reasons they might choose one form over another. In the next section, we turn our attention to hybrid forms of organisation.

Table 2 summarises some of the key elements discussed above.

## **Hybrid structures**

Hybrid models refer to the combination of various models—typically for-profit and not-for-profit entities—to achieve the social purpose of an organisation. In many cases, the for-profit leg of the company is intended to generate income, which can subsequently be reinvested in the not-for-profit branch to fulfil its social objective. As the Legal Resources Centre (2011) suggests, a social entrepreneur might also set up a number of not-for-profit entities, each focusing on an aspect of what the “combined” enterprise as a whole aims to achieve. In this way, a social entrepreneur may diversify and spread the risks the organisation is running by generating income separately in distinct legal entities. The downside of the “hybrid approach” is the multiple registration of companies that it requires, which might increase administrative workload and the costs to be borne by the incorporators. In addition to this, a hybrid construction will also increase the managerial and administrative complexity, and the director(s) of such an enterprise will have to ensure compliance with various legal, auditing and reporting frameworks. It should also be noted that the transfer of assets and funds from one entity to another may be subject to legal restrictions inherent in the form under which each organisation has been incorporated. Hence, while such a hybrid construction might seem luring to potential social entrepreneurs, there are a number of important legal and managerial considerations to be taken into account.

Table 2: Overview of possible legal structures for social enterprises<sup>5</sup>

Legal structure	Governing laws	Key features	Ownership, governance and constitution	Distribution constraint?	Assets "locked in" for community benefit?
<b>Not-for-profit entities</b>					
<b>Voluntary association</b>	Common law and the NPO Act 1997	Informal. Can be set up when three or more people enter into an agreement to form an NPO. No general regulation; VAs make their own rules. However, if a VA registers under the NPO Act, it is subject to governance rules.	Governed according to its own rules. If registered as an NPO, it must reinvest all its profits in the social purpose. May not distribute dividends or bonuses to members.	Depends on the VA's own rules. But if registered under the NPO Act, the rules must state that no distributions may be made to members and office-bearers.	Only if so stipulated in the constitution. Compulsory if the VA registers under the NPO Act.
<b>Trust</b>	NPO Act 1997	A way of holding assets so as to separate legal ownership from economic interest.	Assets owned by the trustees and managed in the interest of the beneficiaries according to the terms of the trust deed.	Depends on the trust deed. Possible to benefit the founder; even trustees can receive benefits, provided there is sufficient separation of assets.	Only if the trust deed specifies it.
<b>Non-profit company</b>	Companies Act of 2008	Most frequently adopted corporate legal structure for non-profit activities. Can be adapted to suit most purposes. Income must be allocated to the pursuit of the main goals. Upon winding up, the remaining assets must be transferred to a similar organisation. Used e.g. for public benefit or community, cultural or communal goals.	Can be formed with or without members. Business managed by directors. Considerable flexibility of internal rules. Books need to be independently audited; annual general meeting required.	No distribution may be made to members. All assets and profits must be allocated to the pursuit of the organisation's purpose (e.g. charitable purpose).	Yes; assets and income are to be used entirely for the organisation's stated purpose, e.g. community benefit.

<sup>5</sup> Table adapted from Steinman (2010).

Legal structure	Governing laws	Key features	Ownership, governance and constitution	Distribution constraint?	Assets "locked in" for community benefit?
<b>For-profit entities</b>					
<b>Private companies ([Pty] Ltd), personal liability companies (Inc.) and public companies (Ltd)</b>	Companies Act of 2008	Independent legal personality. While it is not restrictive with regard to its activities, a company has to set out its main objective in its Memorandum of Incorporation. The founders may voluntarily impose a restriction on dividends or profit distribution to shareholders and thus reorient the company towards a social purpose.	Shareholders are owners. Directors manage affairs. Has full capacity of a natural person, but Memorandum may limit this. Private companies must have at least one director, while public companies must have at least three. For both types of companies, a board of directors acts as agent in governing the company in the name of the shareholders, as per the specifications laid down in the Memorandum.	No, but the Memorandum of Incorporation may define constraints on profit distribution.	Shareholders are entitled to assets upon dissolution. They can renounce this right in the Memorandum, but this is unusual.
<b>Close corporations</b>	Companies Act of 2008	Most popular incorporated business form in South Africa; needs not have a profit motive. 1 to 10 members.	Managed by members/owners. Members do not hold shares; they receive members' interests. Very flexible. Capacity not limited to specific objective.	No, but members could agree in the constitution that profits will not be distributed to members.	Members have a right to share in assets upon dissolution, but they could renounce this right in the constitution.
<b>Cooperatives</b>	Cooperative Act 14 of 2005 and its Amendment (Cooperatives Management Act of 2013)	Group of people joining forces to meet a common economic, social or cultural need through the pooling of individual interests and expertise. Serves members' interests, by trading with them or otherwise supplying them with goods or services.	Managed by a board of directors. One member, one vote (regardless of, e.g., the number of shares held). Shares are optional. Could have membership fees or subscriptions.	No. Depends on patronage, i.e. dealings with cooperative. At least 5% of annual surplus must be allocated to a reserve fund.	Would require bespoke drafting in the constitution (which could be amended by members).
<b>Sole proprietorship</b>	Does not require registration as a legal entity	Simplest kind of independent business. More common among service-based SMMEs as the owner is liable for, and can be sued for, the business's debts. No distinction between the business's assets and the owner's assets.	Single owner, who may or may not employ or contract other people during the course of his/her activities.	Up to the owner.	No.

## CONCLUSION

The present working paper aimed to sketch a broad overview of the ways in which the concept of social enterprise has entered the South African landscape. It tries to offer a tentative typology of social enterprises based on a legal reading. From a close analysis of the available academic and grey literature as well as policy documents, it is clear that the concept of social entrepreneurship is taking root in the country. The South African government recognises the importance of the social economy and the significant contribution that it could make in dealing with some of the persistent problems that the country is facing, such as poverty and high unemployment. Taking a legal approach, this paper aimed to present a (crude) typology of social entrepreneurial activity in South Africa. More systematic research (both qualitative and quantitative) would be needed to tease out a more fine-grained typology. While there is no specific legal framework governing social entrepreneurial activities in South Africa at the moment, a number of policy tools and initiatives seem to be creating a space where social entrepreneurs could establish themselves. The lack of a legal framework for social enterprises in South Africa may both hinder and stimulate the development of the field. Indeed, it may hinder the development of social entrepreneurial activities as the ambiguity surrounding it may discourage potential entrepreneurs. Of great concern here would be the ambiguity regarding access to funding, which may scare away potential social impact investors. On the other hand, this lack of legal framework could also be seen as a blessing in disguise, as it may stimulate social entrepreneurs to experiment with innovative organisational forms.

While there seems to be a growing interest in the topic, too little of the research is being published outside of the South African borders. And beside some noticeable exceptions (such as Hanley et al. 2015; Urban 2008, 2015; or Urban and Teise 2015), most of the studies are still case study-based. It is clear that more systematic research on social entrepreneurship in South Africa is needed. For instance, which organisational forms would social entrepreneurs prefer and why? In a recent study, Hanley et al. (2015) found<sup>6</sup> that South Africa's social enterprise environment is primarily constituted by for-profit organisations, which represented 49% of the sample, while non-profit organisations accounted for 35% of organisations and hybrid organisations represented 14% (this amounts to 98%; the remaining 2% were not identified in the study). Another important area for research relates to the survival rate of this type of organisations. Both SMMEs and cooperatives have astonishingly high failure rates. Is this due to a lack of managerial capacity or human capital or should we look at institutional factors (or at a combination of both) when trying to understand what is going wrong and what lessons could be learned from these failures? A third avenue for research might be related to the social impact of these organisations. With the current attention given to the social economy at policy level, the potential of social enterprises to contribute to job creation, poverty alleviation or some of the other developmental issues South Africa is facing might lead to overhyping the phenomenon and creating too much expectations, which might nip it in the bud if clear results would stay out. It is clear that if we wish to further our understanding of social entrepreneurship in South Africa, both rigorous and systematic empirical and theoretical work is needed. Such work should be grounded in the realities of the country in order to strengthen sound policy decision-making as well as effective organization and management of these organizations, which can play a crucial role in both economic and social development of South Africa. In sum, social entrepreneurship in South Africa is an exciting field, where much is still to be done.

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<sup>6</sup> Neither the sample size nor the way in which the organizations were selected was clearly documented in their research report.

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