**社會企業之定義與其對於傳統公司法挑戰之迷思**

摘 要

社會企業是以「解決一般或特定社會問題」為目標的創新企業組織，其透過一般商業營運模式而非捐贈之方式，在市場機制中得以自給自足。其不但解決了部分的就業問題，亦可達成社會公益之目標。然而，究竟社會企業的定義為何，目前尚無一定論，本文將討論，對於當前社會企業之發展，究竟是否在現階段需要對於社會企業下一個嚴格的定義，並嚴格規範社會企業之經營決策模式；抑或是，應採較寬鬆之解釋態度，使社會企業得以一般營利組織方式先自由發展。再者，本文將探討，當社會企業不再以營利為唯一主要目的，其適用公司法是否會對於傳統公司法造成挑戰，進而改變公司董事與經理人等之受託義務。本文將就美國與臺灣目前之學說與法律詳加討論之。最後，本文將就在現階段即以專法對於社會企業設立特別規範，與一般公司相區別之必要性做一檢討。

關鍵詞： 社會企業、公益公司、受託義務、商業判斷法則、企業社會責任、社會影響力、利害關係人、股東利益達最大化、公司目的

**The Definition of Social Enterprise and the Confusion of the Challenge of Social Enterprise to Traditional Corporate Law**

Abstract

Social enterprise is an innovative type of organization that aims to resolve a general or specific social problem. It utilizes an ordinary business model with the exception of not accepting donations to generate the money it needs to operate the organization, all while still being able to be self-sufficient in the market mechanism. This type of organization not only strives to resolve the problem of unemployment but also extends its goals toward giving a public benefit. However, currently there still is no clear definition of what a social enterprise actually is. This article aims to discuss whether the current development of social enterprise needs a strict definition and whether we need to strictly regulate the business judgment processes of a social enterprise or whether we should have a broader definition of a social enterprise that can allow a social enterprise to be developed easier at this stage. Also, the other issue this article discusses is whether applying traditional corporate law to a social enterprise will challenge the law since a social enterprise’s main purpose is not only making profit. The author also discusses whether this kind of change will make the fiduciary duty of directors different. The discussion focuses on both U.S. and Taiwanese law. In the last part this article concludes whether it is necessary to enact a new law that regulates the social enterprise at this stage to differentiate between the social enterprise and ordinary corporations.

Keywords: Social Enterprises, Public Benefit Corporation, Fiduciary Duty, Business Judgment Rule, Corporate Social Responsibility, Social Impact, Constituencies, Maximizing Shareholder Profit, Corporate Purpose