The Development of Commercial Law in Sweden and Finland (Early Modern Period–Nineteenth Century)

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CHAPTER 3

Chartered Companies in Sweden, the Dutch Republic and England (*c.*1600–*c.*1630): Experiments in Corporate Governance

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1 Introduction[1]

This chapter analyses the organisational structures of chartered companies in North-West Europe in relation to economic, cultural and political variables. The focus is on developments during the first three decades of the seventeenth century, in Sweden, the Netherlands and England.

First, the chapter argues that in this period rules of governance for chartered companies were national, but also that the crafting of these norms was a dynamic and interactive process. The drafters of charters devised rules with elements that were drawn from foreign company statutes and practices. In this era, the Dutch *Verenigde Oost-Indische Compagnie* (1602, henceforth VOC), and the English East India Company (1600, henceforth EIC), as well as the Dutch *West-Indische Compagnie* (1621, henceforth WIC), were regarded as paragons of commerce. It is true that contemporaries – and in particular governments of other states – considered their charters as examples. This was due to the success of these companies. Policies of establishing chartered companies also related to the coming into being of a "mercantilist" political-administrative culture all over Europe. However, the aura of the mentioned companies should not be inflated to the point of considering them predecessors of present-day "corporations." A "genealogical" approach to the history of chartered companies is highly problematic.[2] The first regulations of the Dutch and English chartered companies lacked many features of present-day corporations. Moreover, in the

1 This chapter was made possible with the support of the Academy of Finland and the European Research Council. I would like to thank Katja Tikka (University of Helsinki) and Jussi Sallila (University of Helsinki), for sending me copies of company statutes and for guiding me through the Swedish archives.

2 On hindsight bias in analysing the history of chartered companies, see Cordes and Jahntz 2007, p. 5–19 (nos. 4–6), Arguing that early chartered companies did not develop in linear ways from medieval examples, and because of their combined political and economic features. See more Steensgaard 1981, p. 245–251.

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eyes of contemporaries, the chartered companies were not considered to have a fixed corporate governance regime. Indeed, the organisational characteristics of these companies were subject to swift, often fundamental changes.[3] Moreover, not all changes were implemented by way of new charters; sometimes decisions about structuring were taken by the companies' boards that were not communicated widely.[4] As a result, in the early seventeenth century, the successive charters and decisions, even practices, that adjusted the structures of the Dutch and English licensed companies precluded a perception of their charters as "models" for organisations of overseas trade. Legal borrowing was concerned with parts of charters, with practices and views, not with the transplanting of charters as such, or as a whole. Furthermore, the developing rules of organisation could serve as inspiration but they were not simply replicated. Instead, all over Europe rules and charters for companies reflected new ideas on such issues as limited liability of investors, legal personality and directors' liability. But, again, such new ideas could be borrowed from elsewhere.

In this regard, plans for setting up chartered companies in the Scandinavian and Baltic regions, and in Sweden in particular, are highly illustrative. Drafts and charters of company statutes, which were often written by or in close cooperation with merchants, contain elements selected from Dutch and English texts and practices. This demonstrates legal borrowing, but also, the Swedish plans and charters built on novel interpretations of problems of corporate governance. The Dutch and English companies have received ample attention, and they have often been compared.[5] By contrast, chartered companies in Sweden have been analysed less, and they have not yet been linked to recent literature that delves into the developing corporate regulations in the Dutch Republic[6] and England.[7] Moreover, the relative wealth of source materials

3 With regard to the VOC, this point was raised in Steensgaard 1982, p. 238–239; Gelderblom 2013, p. 1050–1076. Both publications argue that permanence of capital was not envisaged from the start. The second publication contends that several new organisational features (limited liability of directors, permanence of capital, pooling of debt) were developed in response to shortages that were due to unforeseen events. Steensgaard considers the changes of structure to be the side effects of practical decisions, and of differences in approach between the company's offices in the Netherlands and in Batavia.

4 Kirti 1965, p. 33. (1615, different minimum admissions for merchants, shopkeepers and members of the gentry); Gelderblom, Jong and Jonker 2013, p. 1061. (1617, pooling of debt).

5 Heckscher 1994, p. 223–254.

6 Jongh 2016, p. 61; Jongh 2014, p. 60–102, 133–164; Gelderblom, Jong and Jonker 2011, p. 26–62; Gelderblom, Jong and Jonker 2013, p. 1050–1076.

7 See the entire book by Gialdroni 2011. See also the older, rich monograph by William Robert Scott, which is often overlooked: Scott 1912.

for Sweden, as compared to the Dutch Republic and England, allows us to reconsider the coming into being of corporate governance norms in North-West Europe.

A second point of this chapter is that the variables that determined which foreign characteristics of organisation were chosen could be, and often were, cultural and political, rather than economic. The penholders of statutes did not select such features on the basis of economic conditions, but rather from within convictions on the properties of successful companies. The auras of the Dutch and English chartered companies hindered assessments of the regional and national situations, and on how to adapt companies' structures accordingly. Early seventeenth-century Sweden is a case in point. The mercantile settings in Sweden in the first years of the seventeenth century were modest overall. Swedish chartered companies were devised mainly to attract or channel flows of Scandinavian and Baltic trade to harbours of the Swedish heartland, in order to stimulate commerce at home and to generate revenue for the Crown. These licensed companies did not often perpetuate existing mercantile ventures, even though they were proposed by or written in cooperation with (foreign) merchants. Plans were drawn up and adjusted according to the political-economic views of the Swedish government. They were not just private business ventures that were rubber-stamped by the Swedish kings. Reasons for why constraints were political and cultural rather than economic include that it was unclear which institutional characteristics of monopolistic, chartered companies were the most efficient. Throughout North-West Europe, ideas regarding core problems were diverse, and the motives underlying comparable changes in the charters could differ. Moreover, the impact and success of chartered companies depended not only on their institutional frameworks, but also on other factors such as policy continuity, territorial acquisitions, and the availability of capital and knowhow. In Sweden, lack of capital and unwieldy politics of trade were crucial factors.

2 Sweden's Trade Policy and Foreign Mercantile Relations in the Early Seventeenth Century

Dutch merchants have traded in Scandinavia and the Baltic regions since the later Middle Ages. Particularly from the beginning of the sixteenth century onwards, many merchants from the Low Countries set up trading associations venturing to those areas, and traders, or their servants or apprentices, commonly settled for some time in ports in the Scandinavian, Baltic and Russian

territories.[8] From around 1590, within these provinces Sweden and Denmark became more integrated in North-Western European trading networks than before. This arose from a mix of mercantile demand, territorial expansion and state intervention. In the later years of the sixteenth century, Swedish exports of iron, copper, tar and pitch increased. In particular, the export of copper from Sweden and tar from Finland rose quickly.[9] In addition, mining proved lucrative in the Norwegian territories, which depended from Denmark.

Early on, Dutchmen had stakes in these trades. In October 1605, the Swedish King Carl IX (1604–1611) started negotiating with Dutch merchants on trade from the newly established city of Gothenburg, on the island of Hisingen.[10] These and other contacts amounted to the further integration of the markets of Sweden and the Dutch Republic. In the 1610s, many copper mills in Dutch cities were processing shipments that had come from Sweden.[11] In Sweden, Dutch merchants started investing in mining infrastructures, and this also happened in the larger Scandinavian area.[12] In matters of trade, the Swedish state drew on the expertise of foreigners. Because of the intertwining of commerce and government affairs, shortly after 1605 many Dutchmen – merchants but also diplomats and jurists – had already been awarded high positions in the Swedish administration.[13] These Dutchmen came not only from the County of Holland, or from its capital Amsterdam, but also from other constituencies of the Low Countries, in particular from French-speaking regions.[14]

The Baltic and Russian trades were at least as important as the Swedish export trade. Local products from the Baltic and Russian mainland were exchanged. But the Baltic and Russia commerce also penetrated into the

8 Grell 2016, p. 229–245; Jeannin 1996, p. 221–262; Müller 2005, p. 60; Wijnroks 2003. One can also refer to Dutch whaling expeditions, which were directed to the coasts of Norway and surrounding territories.

9 Klein 1978, p. 459; Klein 199, p. 245–247.

10 Thomson 2005, p. 336.

11 Israel 2002, p. 96, 116.

12 Van Bochove 2008, p. 63, 103. Examples include the de Marselis family, which invested in Norwegian mining, and the de Geer family, which had stakes in Swedish mines.

13 Wrangel 1901, p. 22–23. (on Abraham Cabelliau, who – besides major of Gothenburg and governor of the Gothenburg Company – was also the chairman of the royal mint), and p. 23–25 (concerning dr Jacob van Dijck, councilor at the royal court in 1609). See the biographies of Abraham Cabelliau and Jacob van Dijck, respectively G. Jacobson, on Svenskt biografiskt lexikon. For the intense Dutch-Swedish relations of lawyers and law professors in the 1630s and thereafter, see Modéer 2014, p. 69–77.

14 Businessmen Louis de Geer and Peter Minuit were Walloons, as were many workers in the Swedish mining and iron industry. See Jespersen 2016, p. 374.

heartland of Central Asia. Via Narva and Archangelsk, Moscow was reached, where merchandise as raw silk, leather and rugs were sold that had been imported from Persian cities through Astrakhan. The infiltration of Sweden in the Baltic and Russian trades rose in concordance with its territorial ambitions. From the middle of the sixteenth century onwards, important Baltic and Russian ports were conquered. They included Reval (1561), Narva (1581), Ivangorod (1612), Ingria (1617), and Riga (1621). During the reign of Gustav II Adolphus (1611–1632) a "derivation" policy was pursued, which entailed the maximisation of taxation opportunities on freights going to and from the captured harbours. However, at the same time, attempts to stimulate commerce through Swedish cities and to create a Swedish bourgeoisie were at odds with this "eastern" programme. Ships did pass through Stockholm or Gothenburg, but the attractiveness of these harbours was limited; acknowledging the prominence of the Baltic and Russian ports meant that Swedish ports remained underdeveloped.[15]

The ambitions of the Swedish and Danish kings to increase trade to and from their nations, and at the same time raise income for the Crown drew merchants from the Dutch Republic, carrying with them plans for chartered companies. Before the seventeenth century, companies with many silent partners uninvolved in the trade had generally not been set up in Scandinavian and Baltic regions.[16] After 1605, this changed, mostly because of Dutch influence. In Sweden, the reinvigoration of Gothenburg and negotiations on trade privileges were accompanied by the grant of a royal charter for a trading company in 1607. This company was planned as a venture for all trade over Narva, to Russia and also Persia, but it did not last.

When Gustav II Adolphus became king in 1611, a new era of intense Dutch-Swedish relations began. In 1614, Sweden and the Republic signed a peace treaty for fifteen years.[17] At the beginning of 1615, Dutch merchants approached the Swedish King with a scheme for a ten-year "Swedish Company in Stockholm."[18] The Swedish government drafted over the Dutch-language

15 Kotilaine 2005, p. 142–178.

16 Arrangements involving limited liability of investors (*wedderlegginghe*, *sendeve*) had been known in the late medieval Hanseatic trade. The investing partner was shielded in these arrangements, albeit more practically than legally. However, in contrast to many chartered companies, the *wedderlegginghe* and *sendeve* were cooperative ventures, which were established by way of an agreement between the partners. See Cordes 1998, p. 121–154.

17 Lindblad 2014, p. 23–25; Wetterberg 2014, p. 40–54.

18 Riksarkivet Stockholm (henceforth RAS), *Ämnessamlingar*, *Handel och sjöfart*, no. 46. This project draft is written in Dutch and is labelled "*Voorslach ofte concept van een compagnie*"

proposal and changed some of the characteristics of the proposed Stockholm company. The final charter of the Stockholm company reflects a change in Swedish trade policy, which had become markedly more investor-oriented. The Stockholm company was destined for trade of any merchandise, as was the 1607 Gothenburg company, and it was of long projected duration (ten years). The charter took into account the rights of investors, even though control over the venture remained in the King's hands.[19] In spite of all this, the Stockholm company was not launched. In 1619 another company was set up, the charter of which was renewed several times.[20] This "Swedish Trading Company" was of more limited duration (three years), and in 1620 was combined with a monopoly in copper at the mine of Stora Kopparberg.[21] The company had similar structural characteristics as the 1615 company.

Even though the 1607, 1615 and 1619 companies were very different, their charters all reflect Dutch influence, as will be detailed further. But Dutchmen were also active in Denmark. In March 1616, the Danish King Christian IV established an East India Company, after he had been courted by two Dutch merchants, Herman Rosenkrantz and Jan de Willem, with plans for such a company.[22] In tandem with the success of their business ventures, Dutch merchants

("Proposal or concept of a company"). It contains 32 sections, followed by an "Instruction" of 19 sections. The text does not bear a date or the names of its authors. *Terminus ad quem* is 1 February 1616, when the first subscriptions were accepted. The document is described in the books by Wittrock 1919, p. 12–15; Thomson 2005, p. 336–337.

19 *Samling utaf kongl. Bref, stadgar och forordningarr angaende Sweriges Rikes commerce, politie och oeconomie …*, vol. 1, p. 660–667 (the Väsby-charter, 1 March 1615), p. 668–671 (instruction), p. 671–678 (the Stockholm-charter, 24 April 1615) (all hereafter 1615 StoC). The first charter is discussed in Wittrock 1919, p. 16–19, the second one is not. See on the 1615 Stockholm company, also Johnson 1911, p. 45; Thomson 2005, p. 336–337.

20 For the first charter, see von Stiernman, *Samling*, 1, p. 708–710 (24 July 1619) (henceforth SwTC 1619). In December 1619, December 1620, December 1622, January 1625, January 1626 and June 1626 new statutes for this "general" company were issued. See von Stiernman, *Samling*, 1, p. 718–731 (21 Dec. 1619) (henceforth SwTC 1619/2), and p. 761–774 (21 Dec. 1620) (henceforth SwTC 1620); RAS, *Ämnessamlingar*, *Handel och sjöfart*, no. 50 (22 Dec. 1622) (henceforth SwTC 1622); von Stiernman, *Samling*, 1, p. 923–926 (10 Jan. 1625) (henceforth SwTC 1625); RAS, *Ämnessamlingar*, *Handel och sjöfart*, no. 46 (1 Jan. 1626) (henceforth SwTC 1626); RAS, *Ämnessamlingar*, *Handel och sjöfart*, no. 46 (June 1626) (henceforth SwTC 1626/2). The labels that have been given to this company differ. Ligtenberg and others refer to a "copper company." See Lightenberg 1914, p. 90. Even though the focus was on copper trade, for which in 1620 a monopoly was granted, all kinds of merchandise could be traded. See in this regard Johnson 1911, p. 45; Roberts 2013, p. 118.

21 Styrker 2014, p. 136.

22 Diller 1999, p. 24–25; Rindom 2000, p. 100; Sørensen 2005, p. 109; Willerslev 1944, p. 608.

infiltrated Swedish and Danish high society, to the extent that they granted loans to the monarchs.[23]

The Swedish Trading Company of 1619 had potential, but it struggled early on and was eventually wound up in 1628, largely because of King Gustav's incessant borrowing from the firm.[24] Yet the idea of a "general" Swedish trading company persisted, and this resulted in the founding of a new company, the Swedish South Company (1626), which was oriented towards the West Indies. This was done in close cooperation with Dutchman Willem Usselinckx. He had come to Sweden in October 1624,[25] and under his instigation new initiatives on chartered companies were taken. Usselinckx, born in Antwerp, had migrated to the United Provinces in the early 1590s after many years abroad. Ever since the later years of the sixteenth century, he had advocated for a Dutch West India company. At first, the plans were not implemented because of the Dutch-Spanish conflict. When the project was revisited during the Truce with Spain (1609), Usselinckx' ideas were seriously challenged by the Dutch state authorities. Drafts of statutes circulated in political bodies of the Netherlands, and Usselinckx drew up another project charter in 1619. However, when in 1621 it was ultimately decided to launch a West India Company, most of Usselinckx' proposals were ignored. Usselinckx had envisaged the WIC as a purely commercial organisation that would trade with permanent Dutch settlements in South America. A Council would control these colonies, which would be a political body. By contrast, in matters of commerce, only traders would decide: the investors and not institutional bodies of cities and regions were to elect the directors, as was the case in the VOC. In this regard, the Estates-General, which wielded the highest political authority in the Dutch Republic, were not to interfere with the directors. The proposed separation of commerce and foreign policy was not accepted: the Estates-General opted for a company that was devised as a military structure, with broad powers for the central government and little control by shareholders.[26]

In December 1624, the Swedish King Gustav granted Usselinckx a license to establish a general trading company in Sweden, which would become the South Company.[27] Even before that time, in November 1624, Usselinckx had

23 The Trip family lent to the Swedish king. See Müller 2005, p. 68. The de Marselis family extended loans to the Danish King Christian IV. See Van Bochove 2008, p. 248.

24 Roberts 1958, p. 2, 92–99; Stryker 2014, p. 135.

25 Jameson 1887, p. 93; Lightenberg 1914, p. 97.

26 Jameson 1887, p. 61–63.

27 Samling utaf kongl. Bref..., p. 910–911. (21 Dec. 1624).

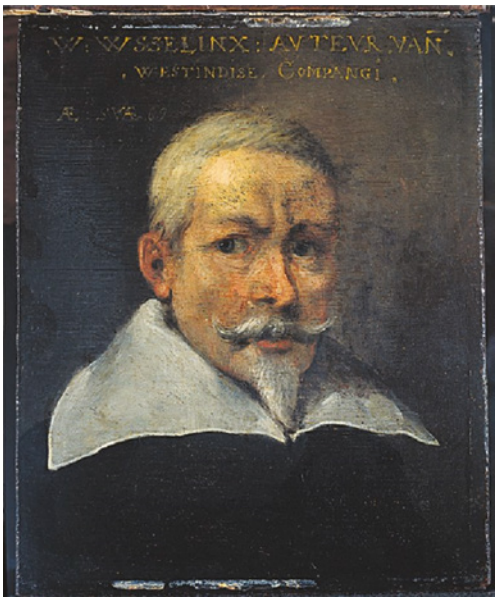

FIGURE 4
Portrait of Willem Usselincx (1567–1647).

written a draft of statutes.[28] In June 1626, King Gustav issued a charter, thereby founding the South Company for a period of twelve years (1627–1639).[29] Usselinckx was appointed director-general of the company, and boasted of his achievements among his former compatriots by translating the charter into Dutch and having it printed in The Hague in 1627.[30] Usselinckx' views on corporate structuring had been novel around 1605, when they were first formulated, but they had become somewhat out-dated by 1626, considering the

28 RAS, *Ämnessamlingar*, *Handel och sjöfart*, no. 48. This document is in Dutch. Jameson refers to two (Dutch-language) copies of the November 1624 draft. Only one of them could be located. See Jameson 1887, p. 214 (no. 18) and p. 215 (no. 19).

29 See for the Swedish version Samling utaf kongl..., p. 1, 932–947 (14 June 1626) (henceforth: SC 1626). A Dutch version (which in fact was nearly the same as the 1624 draft) is W. Usselinckx, *Octroy ofte Privilegie, soo by den alderdoorluchtigsten grootmachtigen vorst ende heer heer Gustaeff Adolph van Sweden ... aen de nieuw opgerichte Zuyder Compagnie in't koningrijck Sweden, onlangs genadigst gegeven ende verleend is*, ... (The Hague: Aert Mueris, 1627), no fol. The charter was also translated in High German: *Argonautica Gustaviana; das ist nothwendige Nachricht von der Newen Seefahrt und Kauffhandlung ...* (Frankfurt am Main: Caspar Rodteln, 1633), no. fol. The *Argonautica Gustaviana* was inserted into Johann Marquardt, *De iure mercatorum et commercium* (Frankfurt: Matthias Gotzius, 1662), p. 373–540. There also exists a "contract," probably from 1625, which lists 12 sections (complementing the 37 sections of the 1626 charter) resuming the basic features of the company. See Samling utaf kongl..., p. 1, 911–922 (1625).

30 Usselinckx, *Octroy ofte Privilegie*.

changes that had been implemented in the Dutch Republic in the intervening years. In other respects, the ideas of Usselinckx were closely attached to Dutch examples, which were not always fit for the Swedish context.

The changing contents of Swedish statutes of chartered companies, and their interactive features vis-à-vis Dutch and English plans and charters of such companies, are evident from a comparison of Swedish, Dutch and English source materials. In total, for the analysis of developments in the Netherlands and Sweden, ten drafts and seventeen issued charters were used. They were written and/or issued in the period 1601–1630. Of the drafts, three concern the Dutch East India Company (dating 1601 and 1602),[31] four projects relate to the Dutch West India Company (three dating 1606, and one 1619),[32] and three proposals regard Swedish companies (dating from 1615, 1624, and 1627–28).[33] The Dutch-issued charters of the VOC (1602,[34] 1622,[35] 1623[36]) and the WIC (1621[37] and two of 1623[38]) were consulted as well. The Swedish charters include those of the Gothenburg Company (1607), the Stockholm company (1615), the Swedish Trading Company (1619, 1619/2, 1620, 1622, 1625, 1626, 1626/2), and the South Company (June 1626, as well as the 1625 "Contract"). In addition to the ten

31 *De opkomst van het Nederlandsch gezag in Oost-Indië (1595–1610). Verzameling van onuitgegeven stukken uit het oud-koloniaal archief*, vol. 1, p. 257–261 (petition, 1600–1601), p. 262–271 (Dec. 1601 – Febr. 1602), and p. 271–278 (Jan. 1602).

32 The first ones were published in A.C. Meijer, ""Liefhebbers des vaderlandts ende beminders van de commercie." De plannen tot oprichting van een generale Westindische compagnie gedurende de jaren 1606–1609," *Mededelingen van het Koninklijk Zeeuwsch Genootschap der Wetenschappen* 1984, p. 21–70, here p. 50–59 (integrated version of the "*Project*" (middle of 1606), "*Rapport*" (Aug. – Sept. 1606), and "*Concept-Octrooi*" (Oct. 1606)). The 1619 draft by Willem Usselinckx was published in Otto van Rees, *Geschiedenis der staathuishoudkunde in Nederland tot het einde der achttiende eeuw*, vol. 2 (Utrecht: Kemink, 1868), p. 384–408.

33 See footnotes 18 and 27. The 1627–1628 draft is preserved in RAS, *Ämnessamlingar*, *Handel och sjöfart*, no. 49. It is a French document, containing 103 sections, and detailing the features of a new "*compagnie du sud*," for a duration of 18 years. The name of the author is not mentioned, but Willem Usselinckx is the most likely candidate. Jameson does not mention this document in the bibliography added to his monograph.

34 The 1602 VOC charter was published and translated in English in Gepken-Jager 2005, p. 1–38. Henceforth it will be referred to the (numbered) version published in Van der Chys 1865, p. 98–115.

35 *Groot-Placcaet-Boek vervattende de placaten, ordonnantien ende edicten van de doorluchtige, hoogh mog. heeren Staten Generael der Vereenighde Nederlanden*, vol. 1 (c. 539–544 (22 Dec. 1622) (henceforth VOC 1622).

36 *Groot-Placcaet-Boek*, 1, c. 543–546 (13 March 1623).

37 *Groot-Placcaet-Boek*, 1, c. 566–578 (3 June 1621).

38 *Groot-Placcaet-Boek*, 1, c. 584–586 (13 Febr. 1623); *Groot-Placcaet-Boek*, 1, c. 585–590 (21 June 1623).

drafts and seventeen issued charters listed above, comparisons can be drawn not only with the English EIC (charter of 1600[39]), but also with the first French Company for East India trade (1604),[40] the Danish East India Company (1616) and the Danish Icelandic Company (1619).[41] The French and Danish companies have been linked to proposals that were written by Dutchmen as well.[42]

3 The Gothenburg Company (1607): a State Venture without Shareholders' Rights

In its initial phase, until around 1615, corporate governance was not considered important in Sweden. The Gothenburg company was established in September 1607. King Carl IX granted a charter that was written in Low German, and even though it nominally addressed both Swedes and non-Swedes, it clearly targeted foreign merchants. The newly located Gothenburg, on the island of Hisingen, was proposed as their place of business. The venture would focus on trade with Russia and Persia. The company's charter is peculiar in terms of trade policy. This is evident in the fact that no formal monopoly was awarded, even though low taxes for imported merchandise were promised. Around 1607, elsewhere in Europe, trading companies without monopolies were being set up, but it had become very rare by then to launch a chartered company without a monopoly.[43] It is probable that the Swedish King was hesitant on how to impose a monopoly considering that the trade within the scope of the company moved mostly through the Swedish Baltic ports of Narva and Reval. Gothenburg was not given a right of staple. In this regard, the "eastern" approach was clearly interfering with plans to launch commerce through Swedish towns. Another indication of this indecision might be that

39 See the published charter in Gialdroni 2011, p. 299–319.

40 In 1600, a *compagnie des mers orientales* was established. Royal *lettres patentes* for an East India Company were accorded in 1604, 1611 and 1615. The 1604 and 1615 lettres were published in Francheville 1746, p. 161–162 (1 June 1604), and p. 161–166 (2 Sept. 1615).

41 Their statutes were published in Feldbæk 1986, p. 25–33 (17 March 1616), p. 489–494 (16 Dec. 1619), and p. 494–504 (29 Jan. 1620). The 1616 charter, together with a German translation, can also be found in Lehmann 1895, p. 91–105. For a description of these statutes, also with a focus on corporate governance issues, see Diller 1999, *Die Dänen in Indien, Südostasien und China*, 17 *seq.*; Rindom 2000, "Ostindisk Kompagni"; Willerslev 1944, "Danmarks første aktieselskab."

42 Diller 1999, p. 17; Willerslev 1944, p. 608. 17; Willerslev, "Danmarks," 608, and p. 614–620. For Dutchmen negotiating on chartered companies in France, see Van Dillen 1958, p. 41 (Pieter Lijntgens 1604); Van Dillen 1930, p. 5–10 (Isaac Le Maire 1605–1610).

43 Gelderblom 2009, p. 226–232.

investments in the Gothenburg company could be made not only at Gothenburg and Stockholm, but also at Reval.

At the same time, many efforts were made to attract as many investors as possible. Investments could be made in kind. There were no requirements on minimum investments. Admittedly, the latter was not unusual in this period. Minimal nominal contributions had not been imposed in the original VOC and EIC charter either. But other parts of the charter also reflect a policy of lowering the bar for participants. Investors in the Gothenburg company were promised very high returns. Investments were possible during the course of the first two years, and a 12 per cent interest on injected capital during those years was guaranteed. In the Dutch VOC of 1602, instalments could be made within five months (s. 11) and a minimum 7.5 per cent interest was granted after a period of ten years (s. 9).

In spite of its attractive characteristics, accountability towards investors in the Gothenburg company was weak.[44] A closing account of the company was to be made only after twelve years. It was vaguely promised that – "no doubt" – investors would receive their share of profits regularly, but implicitly it was meant that the company's directors, and practically the King (see hereafter), would decide on this. The mentioned 12 per cent interest only concerned the first two years. Withdrawal of investments and a guarantee of a share in the profits – if any – were only provided for after twelve years. It was prohibited to cancel investments before that time. The statutes of the Gothenburg company stipulated that at the end of the twelve-year lifetime of the company investors could sell, assign or pledge their invested capital and accrued profits. This reflects, to some extent, contemporary commercial practice in Amsterdam and London, but it was markedly stricter. As early as 1602, the subscription ledgers of several chambers, i.e. regional units, of the Dutch VOC had provided that transfers of debentures of investments could be made, even when expeditions had not been rounded up. This ultimately resulted in a vibrant secondary market in shares.[45] Also, shares of the EIC were sold as early as 1601, before the closing of accounts.[46] However, in contrast to Dutch and English mercantile practice, the shares of the Gothenburg company could not be sold before its date of expiry.

Minimal exit options were not counterbalanced with voting rights. The charter did not detail the relationship between investors and directors. The underlying idea was clearly that the King would appoint the managers and that investors would not participate in the policy of the company. In fact, the

44 See also Hagströmer 1872, p. 83.

45 Heijer 2005, p. 95, 107; Gelderblom and Jonker 2004, p. 653–663.

46 Chaudhuri 1965, p. 215.

Amsterdam merchant Abraham Cabelliau was granted the position of governor by royal decree, which conflated with his post of mayor of Gothenburg.[47] Moreover, provisions regarding a right of audit and the responsibility of directors vis-à-vis investors were lacking. This conforms to the contents of the charter of the Dutch VOC around that time. Investors did not control or have a part in the nomination of directors, which were proposed by the chambers. The chambers were units organised by cities or provinces, and their administrators chose directors from among the main investors (s. 26), who were closely linked to the political class.[48] By contrast, in the English EIC, the council of directors, i.e. the Court of Committees, responded to investors before the closing of the accounts of each expedition. Each decision on policy was submitted to the General Court, a gathering of all investors, and this general assembly also appointed directors annually.[49]

For Sweden, all the above points to unwieldy trade policies and a minimal knowhow in devising structures of companies, in combination with an aim of close supervision by the Swedish sovereign. In terms of corporate governance, the charter of the Gothenburg company followed the charter of the VOC closely in some respects, and was not influenced by the English examples very much. As was the case for the Dutch company, it was thought that investors' capital was to be locked in and that the participants had to rely on the board and the royal government.

4 The Stockholm Company (1615) and the Swedish Trading Company (1619): Corporate Governance as Invitation

The charter and instructions of the 1615 Swedish "Stockholm company" differed fundamentally from the statutes of the – by then collapsed – Gothenburg Company. The Stockholm company was more commercially orientated. The charter granted a monopoly, and it also listed detailed tax cuts (s. 20). Moreover, the exit options for investors were more generous. Participants were granted the right to sell or pledge their shares at any time, even during the ten-year duration of the venture, provided that the directors agreed and no harm would accrue to the company (s. 5). In terms of administration, distinctions were made between general policy and day-to-day business. It was provided

47 Johnson 1911, p. 45; Wittrock 1919, p. 16. On the synchronicity of the mayorship with the post of governor, see Cronholm 1871, p. 32.

48 Heijer 2005, p. 110–115.

49 Chaudhuri 1965, p. 31–33; Gialdroni 2011, p. 274, 281.

that a governor, a number of directors appointed from among Stockholm investors and a secretary would constitute the executive committee of the company, called the *Collegium*. This committee would meet on a daily basis in Stockholm (s. 3 *instruction*). The board of the new company, which was called the General Council ("*General-Collegium*"), consisted of the directors of Stockholm and other directors who represented other cities of Sweden. The board decided issues of importance, such as the buying of new products, and whether to demand the renewal of the charter (s. 5 *instruction*). The General Council chose a governor from among the directors and the investors; the *collegium* chose and appointed all directors, even those outside Stockholm. The governor swore an oath to the King, and the directors pledged allegiance to the governor. In spite of the level of detail of the charter, it was not clearly stated how many directors would be appointed (either as members of the General Council or as members of the executive committee), and who was eligible to be given the post of director. Since the governor depended directly from the sovereign, and presided over the *collegium*, it is a fair assumption that this was left to the discretion of the royal government.

4.1 *Dutch Influences Concerning Investors' Rights*

The charter and instruction of the 1615 Stockholm company resembled the abovementioned Dutch proposal that had been written some time before. For example, both were for ventures of ten years that started on the same date, 1 March 1616. The 1615 charter clearly incorporated ideas taken from the 1615 Dutch draft, which were of Dutch origin. For the first time in a Swedish charter, the act of investing was called "*participere*" (s. 1) and an investor was described as "*participant*" (s. 5), which was the common term for investors in contemporary Dutch company statutes. The debenture that the "*participant*" received upon making an investment was called "*action*" (s. 5), from the Dutch "*actie.*" The latter notion had become common in the Dutch Republic since 1602.[50] Furthermore, the compound organisational structure of the Stockholm company was comparable to the one in the 1615 draft, which had proposed an executive committee as well as a board. However, both the draft and the 1615 charter largely followed the organisational scheme of the VOC as well. The VOC's board of Seventeen Directors (*Heeren XVII*) consisted of selected

50 The date of 1606 or 1607 has been proposed in older literature, but does not hold in view of more recent findings. See Heijer 2005, p. 95, footnote 103. For the older view, see Colenbrander 1901, p. 383–387; Van Dillen 1958, p. 32. Critical on the idea that the "*actie*" only covered the dividend, not the share of capital, which was uttered by Lehmann and Colenbrander, is Van Brakel 1908, p. 155–156.

directors, and this body decided on the policy of trade and important affairs (s. 2–3), as the General Council of the Stockholm company did. In the VOC, cities and provinces selected directors ("*bewindhebbers*") for their chambers from the main investors and these in turn delegated directors to the board (s. 26). The dominant presence of Stockholm directors in the *collegium* is reminiscent of the prominence of Amsterdam *bewindhebbers* in the VOC board. Moreover, the idea of an executive committee had been known in the Netherlands as well.[51]

In some regards, the Stockholm company implemented ideas from Dutch commercial practice that had not always been written into company charters. For example, a distinction was made between active and non-active directors. This was not mentioned in the VOC charter or in the drafts for the WIC, for example, but it was common in Dutch commercial practice.[52] Other rules, both in the Dutch draft and in the charter of the Stockholm company, had merely been proposed and discussed, but had not received approval in the Dutch Republic. This was clearest with regard to the right of audit of large investors. According to the 1615 draft, accounts were closed every year and the results were presented to the executive committee. To this end, the executive committee was supplemented with a number of investors (s. 17 draft charter, s. 7 draft *instruction*). According to the charter of 1615, six selected "*partipanter*" were to assist the board in the annual closing of accounts (s. 7 *instruction*). Ideas on a right of audit and participatory powers for main investors in important decisions had been elaborated on in drafts for the Dutch WIC since 1606, even before the protests of shareholders in the VOC,[53] but it took another seven years

51 The *collegium* resembled the gatherings of all directors of each chamber of the VOC. On the emergence of the executive committee of directors acting as one, see Gelderblom 2013, p. 42.

52 In the so-called Dutch "Nordic" company ("*Noordsche compagnie*"), which had been granted a monopoly on whaling in 1614, the body of active directors of each chamber was called the "*Magistraet*" (magistracy). The 1617 charter of this company provided that candidate-directors were proposed by the directors, as was the case in the VOC, and then selected by the "*Magistraet*," which suggests a distinction between executive committee members and other directors. See 1874, p. 425 (s. 10) (24 Jan. 1617). One of the drafts of the 1602 VOC charter also mentions "*gemene bewindhebbers*" of chambers, most probably as opposed to directors who were not members of the steering committee of a chamber. See De opkomst van..., p. 270 (s. 30).

53 Meijer 1984, p. 55–56 (s. 21). This section provided that directors would appoint some of the main investors ("*hoofdparticipanten*"), who would delegate one or some of them to assist at the annual closing of accounts. The delegate main investors could check partial accounts intermittently as well. They sat with the directors when they discussed "important affairs." These rules had not been proposed during the negotiations leading up to the 1602 VOC charter. See also Gelderblom, Jong and Jonker 2011, p. 48–49. The right of assisting at

after 1615 before they were imposed in the Netherlands. In the English EIC, the dissent of shareholders denouncing the secrecy of the Court of Committees dates from 1619. They called for auditors to be chosen among the investors, but they did not succeed.[54] Overall, dynamics in the Dutch VOC and English EIC were different. In the latter, merchants were at the steering wheel, and they shielded the business of the company from non-merchants.[55] By contrast, in the Dutch VOC, the shareholders' grievances were mostly of merchants advocating access to the closed circles of *regenten*, to which the directors belonged.

With regard to investor-director relationships, one must be cautious not to be anachronistic. The absence in the 1615 Swedish charter of the right of investors to select directors was not backward. In 1615, rights of shareholders to nominate directors were non-existent in the Dutch Republic as well. The Dutch draft of 1615 provided that directors and not the investors chose and appointed directors. In the 1602 VOC charter, it was said that new directors were proposed by existing directors and installed by the political body (provincial estates, city) that had a chamber (s. 25). Admittedly, in the Dutch Republic, before the implementation of the mentioned VOC charter and again in 1606 in negotiations on the new WIC to come, it was proposed that the major shareholders would elect the directors.[56] But this was a view that was not widely shared and it met with resistance from above, resulting in its late implementation, well after 1615. For example, in the first WIC charter of 1621 the provisions of the VOC statutes on the issue were reproduced.[57] Only in 1622 and 1623 was the election of (some) directors by large shareholders accepted, for both the VOC and the new WIC (see hereafter, under 4.), but only following long and severe contention amongst the investors.[58] In the Danish East India Company of 1616, new

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the annual closing of accounts did not entail a right to decide on dividends. According to the 1606 proposal, the delegate main investors only controlled their chamber, not the Board of Seventeen Directors.

54 Chauduri 1965, p. 58–60.

55 Chauduri 1965, p. 33–38.

56 Meijer 1984, p. 55 (s. 19); Gelderblom, Jong and Jonker 2011, p. 48–49. In 1601, it had been proposed that both directors and "main and qualified" investors would elect and appoint the directors. See De opkomst van..., 1862, p. 259–260.

57 Jongh 2014, p. 107–108. Another example is the 1617 charter of the Nordic company, which stated that directors proposed candidates, from among main investors, and that the nomination was done by the magistracy of the chamber. See footnote 52.

58 About the changes in the charters of 22 December 1622 (VOC), 13 February 1623 (WIC), 13 March 1623 (VOC) and 21 June 1623 (WIC), see Jongh 2014, "Shareholder Activists *Avant la Lettre*," p. 74–80; Jongh 2014, p. 83–84; Frentrop 2002, p. 88–105.

directors were proposed by the board of directors, and the ultimate choice was in the hands of the Danish King (s. 6).

In this regard, the 1619 Swedish Trading Company changed the rights of investors slightly. Participants with high stakes formed a council. This council was consulted not only on the annual rendering of accounts, as in the 1615 company, but on also when a director's position had to be filled. When a director had to be replaced, the council of investors, together with the directors and the governor, proposed two candidates, one of which would be selected by the King. The directors presented accounts to the governor and to eight selected investors. The latter were also involved when the board deliberated on "important" issues. Every year, the governor and directors had to summon all investors to Stockholm. They proposed sixteen investors, of whom the King chose eight.[59]

In the charters of the Swedish Trading Company of 1619, it was also more clearly provided that dividends were to be paid annually.[60] This was a remarkable innovation, which had much to do with the projected durations of expeditions of one year.[61] Even so, it was very new. It would take several decades after 1619 before annual dividends became part of corporate practice throughout Europe.[62] In this regard, the Swedish government had altered the Dutch proposal.[63] According to the Dutch draft, at the checking of accounts, a decision was to be taken, by the executive committee and the chosen investors together, on the payment of dividends (s. 17 draft charter). But this provision was absent in the 1615 Swedish charter.

4.2 *The Liability of Directors: Sweden ahead of the Dutch*

In another respect, the 1615 Stockholm Company was a testing ground for ideas that were imposed in the Netherlands only later. In the VOC, the liability of directors was related to a complex system of checking and turning over of company-related debts. The company was considered an overarching structure, and the practical implementation of trade decisions was to be done by the chambers. As a result, each chamber had personnel, ships and a shipyard;

59 SwTC 1619, 709; SwTC 1619/2, 720, and 730–731; SwTC 1620, s. 5 and s. 40; SwTC 1622, s. 3, s. 5, s. 38. See also Lehmann 1895, p. 59.

60 SwTC 1619, 709–710.

61 SwTC 1619/2, 719.

62 Lehmann 1895, p. 70–73.

63 See, on the correcting notes made by councillor Axel Oxenstierna in the margins of the Dutch proposal: Wittrock 1919, p. 14–15.

merchandise imported from overseas was sold by the chambers.[64] In terms of capability to engage in contracts, the chambers of the VOC and WIC did not have legal personhood. Chambers were not considered as *corpora* that were liable for debts, and neither were the chartered companies as such. Instead, liability for debts was centred on the directors. In the VOC and WIC, the *bewindhebbers* of the different chambers were held to execute the contracts that they had signed, even if these contracts were nominally linked to their chamber.[65] The first contacts when enforcing company-related debt were the directors, or their cashiers. Directors of a chamber were liable, jointly and severally, for debts signed by their colleagues if they concerned company-related matters.[66] As a result, even personal effects could respond for these debts. After the debts had been paid by one of the directors, they were checked and if considered legitimate taken over by the chamber. The same happened in the relation between the chamber and the company.[67] The final control was annual, even though accounts of equipment made by each chamber had to be sent over to other chambers before that, i.e. three months after the departure of ships (s. 14). The Board of Seventeen Directors issued directives on the equipment of ships and other matters, which were further detailed in the meeting of directors within each chamber. As a result, the practical relevance of the system of turnover of debt depended on the level of detail of these instructions. If the orders were precise, and precisely executed, then there was no question that the debts were inscribed in the final accounts of the company.

In the first years of the VOC, the Board usually made broad directives.[68] This provided considerable leeway for chambers and their directors, but with it went the danger of debts being bounced afterwards, partially or entirely.

64 Heijer 2005, *De geoctroieerde compagnie*, p. 129–139; Van Brakel 1908, *De Hollandsche handelscompagnieën*, p. 76; Van der Heijden 1908, p. 56.

65 Sometimes the debts of the "*comptoir*" of the chamber were mentioned (s. 16), but from other sections of the VOC charter it is clear that directors were debtors for the debts that had been made on behalf of the chamber (s. 30–33).

66 In seventeenth-century Dutch doctrine, a distinction was drawn between the co-ownership of ships, for which limited liability for investors applied, and mercantile companies, including the chartered ones, in which directors were jointly and severally liable. Associates were sometimes put on the same level as co-owners of ships, and then their liability was occasionally defined as *pro parte*. However, this seems not to have been done with regard to the "*bewindhebbers*" in the VOC, who were shareholders as well. See Asser 1983; Punt 2010, p. 108–110; Van der Heijden 1908, p. 50–56.

67 This view is only partially acknowledged in literature. According to Van Brakel, the chambers were administrative units. Any debt made by the directors was the chamber's (Van Brakel contends that directors were not liable for company-related debts), and all debts of the chambers were the company's. See Van Brakel 1908, p. 76–77.

68 Heijer 2005, p. 76.

Moreover, since until 1612 the VOC's capital was not permanent, and the closing of accounts was not regular, the relative freedom of directors in engaging in debt was particularly tricky. Stock and gains could be floated from one expedition to the next, but sometimes pressure from investors mounted and dividends had to be distributed, irrespective of the financial situation of the company at a given moment.[69]

The director's liability instead of the liability of chambers or of the company was a strange construct. It related to a haphazard floating of capital. Investments were made through a chamber. They were nonetheless considered investments in the company, and the Board of Seventeen Directors decided the amount of dividends granted and they were the same for all chambers.[70] Dividends were determined by the Board, following the drawing-up of an integrated account of contributed capital, costs and profit of all chambers.[71] However, the chambers administered the capital that was formed by the investments that they had received. Again, this administration rested on the liability of the chamber's directors. The 1602 VOC charter provided that when a director came to a "state" that prevented the due payment of debts, or which caused damages, this was to be compensated with the capital of his chamber, not by the company (s. 32). It was added that the investment made by the director, which was a minimum of 1,000 *livres* Fl. (s. 28), was by priority used for this purpose. Directors were responsible for the cashiers that they hired (s. 33). These sections most probably indicate that any default on a contract signed by a director, for whatever reason (e.g. negligence, absence, maybe also bankruptcy), was considered the director's responsibility. Therefore, the capital of each director, and even his personal assets, was collateral for his debts, and the capital of the director's chamber constituted a supplementary collateral for the debts that were made through that chamber, that is by its directors.

However, this liability of directors was restricted from the start. In the business ventures ("*voorcompagnieën*") that preceded the VOC, it had sometimes been provided that directors could not be addressed for dividends or reimbursements of capital during the venture, but that this had to be done before

69 Gelderblom, Jong and Jonker 2013, p. 1059–1064.

70 Van Brakel 1908, p. 71. This was the policy in 1610. However, the 1602 charter mentions a dividend of 7.5 per cent "or more, for as much as what was promised" (s. 9). This may reflect remnants of an earlier – never applied – view that dividends were to be decided by the chambers, even though they could not ignore the imposed minimum dividend.

71 Gepken-Jager 2005, p. 75; Van Brakel 1908, p. 76–79. It was common that the chamber of Amsterdam advanced payments and recovered them from the chambers for which they had been made, at this rendering of accounts. See De Heer 1929, p. 58–59.

the board of the company at the end of the expedition.[72] This rule was closely related to a general prohibition of withdrawal for the duration of the company, but it also purported to ensure continuity of the business: the assets of the venture were shielded from attachment. In the later years of the sixteenth century, another provision emerged that restricted the procedural means of creditors addressing directors for debts. This rule was of larger scope: it did not only entail the rendering of account by investors, but also related to debts such as loans and wages. In one of the proposals made for the VOC charter, it was said that persons and merchandise on board ships could not be apprehended or attached for debts (of wages or other), but that payment was only done on arrival and by the directors, potentially following proceedings of arrest or attachment.[73]

According to the ultimate 1602 VOC charter and the 1621 WIC charter, directors could not be arrested or attached on their belongings for holding them accountable for their administration or for the payment of wages. Instead, creditors had to start ordinary proceedings in court (s. 42). This section has often been misinterpreted, in the sense of it providing that directors should not be personally liable towards creditors for company-related debts. Many authors have generally read this meaning into the text – implicitly following the example of nineteenth-century directors in corporations.[74] In fact, it seems

72 "De opkomst van...", 1862, p. 24; Gelderblom, Jong and Jonker 2011, p. 42; Van Dillen 1958, p. 22, footnote 3.

73 "De opkomst...", 1, 277 (s.12).

74 Gepken-Jager 2005, p. 65–66; Van Brakel 1908, p.123; Van Dillen 1958, p. 27: "Nieuwe gegevens" p. 352. See by contrast Heckscher 1994, p. 1, 368; Van der Heijden 1908, p. 56; Zeijlemaker 1945, p. 587. Van der Heijden suggests that proceedings were possible against directors in their role of director. It is not clear whether he considers that attachment of company-related assets found with the director was possible. The prohibition would then merely concern arrest and attachment of personal effects. This interpretation seems too far-fetched; arrest of company-related assets would have hampered the business of the chamber, and it seems that the protection of such assets was one of the motives of this provision. Moreover, it was stressed that ordinary proceedings – in contrast to arrest or attachment proceedings – had to be started. Zeijlemaker proffers – in my opinion – the right interpretation. Most of the authors mentioned have linked their views regarding s. 42 to a presumed liability of the company. This interpretation was *inter alia* based on an opinion by van Zurck in his *Codex Batavicus*. See Van Brakel 1908, p. 56, footnote 4, who however misinterprets Van Zurck's statement. Van Zurck stated that proceedings had to be started against the company, and not against the *bewindhebbers*. But this opinion dates only from 1727. See Eduard van Zurck, *Codex Batavus waer in het algemeen kerk-publyk en burgerlyk recht van Hollant, Zeelant, en het Ressort der Generaliteit kortelyk is begrepen ...* p. 616–617. The statement is not present in earlier editions of this work.

that in the early seventeenth century, together with their share of capital, the personal assets of directors were considered a pledge for the debts they signed, or the damages that they incurred. It is likely that this was also the case when assets were found with the director that concerned the company, even to the extent that no distinction was made between personal and company-related effects.[75] The latter was not unusual for "office-holders": profits as well as debts made were personal, and personal and even office-related properties were not shielded in any way, even though they held an office for a political body. The aforementioned s. 42 of the VOC charter was copied into the WIC charter, and it had not been changed in the proposals that preceded this charter.[76]

By contrast, the 1615 Dutch proposal for the Stockholm company described the protection of directors in much broader terms. No directors could be apprehended, nor even addressed in an ordinary lawsuit, for company-related debts, which were defined in the broadest sense, and neither by investors nor others. Any suit on company-related debt had to be brought before the *collegium*, and in appeal before the Crown's court (s. 10). This provision was copied into the charters of the Stockholm and Swedish Trading Company. The innovative features of this rule are remarkable. For the first time, a strict distinction was being made between personal and company-related debts with regard to the liability of directors. The latter were reduced to the status of administrators, and any debt relating to the company was considered as a debt of the company. In the Netherlands, around the same time, in 1617, the Board of Seventeen Directors limited the leeway of chambers and their directors to engage in loans without their approval,[77] even though the complicated turnover system for debt remained. The partial, rather haphazard protection of directors was kept, and was never formulated in the same broad terms as in Sweden. In the Dutch Republic, directors remained jointly and severally liable for company-related debts, even with their own properties, even though neither their belongings nor the company's assets could be confiscated.

75 This was congruent with academic approaches on the joint and several liability of associates, which was commonly linked to the *actio institoria* or *exercitoria* of Roman law. See the example of a 1604 claim against all directors of the chamber of Zeeland (mentioned in de Jonghe, *Tussen* societas *en* universitas, 69), the examples of bonds signed by directors for company purposes but pledging their person and goods, and a 1611 threat to imprison the directors of the Zeeland chamber for company-related debts, in See the entire book Gelderblom, Jong and Jonker 2013; Gelderblom, Jong and Jonker 2011, p. 43.

76 Meijer 1984, p. 59 (s. 41); Rees 1868, p. 2, 394–395 (s. 25).

77 In 1617, the Seventeen Directors prohibited loans without prior consent. Gelderblom, Jong and Jonker 2013; Van Brakel 1908, p. 78 dates this decision 1607.

4.3 *A Combined English-Dutch Influence*

A non-Dutch element in the 1615 draft, in the 1615 Stockholm company charter and in the 1619 Swedish Trading Company, was the governor. This concept went back to the 1607 Gothenburg company, and had most probably been inspired by English examples.[78] The Swedish notion of "director," as well, is English rather than Dutch: Dutch charters typically mentioned "*bewindhebbers.*"[79] Dutch chartered and non-regulated companies did not generally have a CEO-like figure such as the governor in the 1615 Stockholm company, even though for the VOC a governor-general oversaw the administration of territories abroad.

This brings up the point of parallel English influence in Dutch and Swedish chartered companies. There are some examples of this, such as the 1615 Dutch draft providing for four directors to be responsible for mercantile transactions and two for the equipment of ships (s. 17–18 draft instruction). This reflects the English practice of specialising committees of directors. This had been in use in some of the Dutch *voorcompagnieën* that eventually merged into the VOC, and it was applied in the VOC chamber of Amsterdam as well.[80] Moreover, in the Dutch draft of 1615 (not in the official charter) the meetings of the executive committee were called "ordinary" and "extraordinary" assemblies (s. 8 draft charter). This terminology was rare in the Dutch Republic, whether in drafts, published statutes or in mercantile practice. These notions most probably hint at English influence. In the English EIC, meetings of directors were fixed; when they were unplanned and urgent, they were "extraordinary."[81] A similar point concerns the election of directors by investors, which was a feature of English chartered joint-stock companies, in particular the EIC. It is probable that the EIC also served as an example for proposals in this vein,

78 The notion of "Governor," as leading director, was already established in the fifteenth- and sixteenth-century companies of Merchant Adventurers. See Lingelbach 1902, xxiii–xxvi. It became common after 1600. See Scott 1912, p. 150–151.

79 It is noteworthy that the term "director" first appeared in an English charter in 1618. However, it was used in practice before that time. See Scott 1912, p. 151.

80 The Amsterdam "*Oude Compagnie*" (1597) had four committees, which were for the recruitment of personnel, for equipment, for the buying of victuals and for the buying of merchandise. See Heijer 2005, *De geoctroieerde compagnie*, p. 28; Van Brakel 1908, *De Hollandsche handelscompagnieën*, p. 100. On the 24 committees in the EIC, each of which was led by one director, see Gialdroni 2011, p. 279–283. It seems that in the EIC, committees acted more on delegation than in the "*Oude Compagnie*," in which each committee was said to have "full powers." See Heijer 2005, *De geoctroieerde compagnie*, p. 28. For the committees depending from the chamber of Amsterdam, see Heijer 2005, *De geoctroieerde compagnie*, p. 130–131.

81 See some mentions of "extraordinary courts," in the years 1622–1624, in Scott 1912, p. 2, 274, 277, 285.

which had been made in the Netherlands since the early years of the seventeenth century.

As a result, all the mentioned examples provide a caveat: an exclusively Dutch "style," even in the contents of Dutch-language projects of Swedish companies, was not present. Dutch influence often brought with it English views that had trickled into the United Provinces some time before. Furthermore, Sweden imported Dutch ideas, but the Swedish administrations also filtered and recalibrated them.

5 Usselinckx's Contributions to Swedish Chartered Companies

Willem Usselinckx contributed variously to Swedish and Dutch charters of companies. His attempts to set up religiously inspired colonies and impose a separation of politics from trade within chartered companies in the Netherlands failed, but he brought these views to Sweden. However, there again they were only partially implemented. But some of Usselinckx' ideas gained more ground. Among them were the further generalisation of shareholders' voting rights and guaranteed director positions for large investors. However, in considering the previous developments in Sweden, the role played by Usselinckx in the "modernisation" of Swedish companies has been over-stated. Usselinckx mostly built on what had been done before.

In some respects, Usselinckx was somewhat out-dated. For example, he imported chambers into Swedish chartered companies. Even though the 1607, 1615 and 1619 Swedish charters had already envisaged participation by more than one city, in Dutch chartered companies the structure of chambers, which were attached to city or provincial governments, had become less relevant by the middle of the 1620s. In the VOC, and also in the WIC, a central board monitored a fixed capital, which was decentralised only with regard to practical issues. The chambers in these Dutch companies merely laid out the policy that had been decided in detail by the board. Yet Usselinckx did not abolish the structure of chambers.

The statutes for the new Dutch WIC of 1621 contained one of the few of Usselinckx's ideas that had been accepted, which was that each investor, or group of investors, who put in 100,000 guilders, was granted the right to establish a chamber (s. 11). In 1621, this was novel, since the forming of a chamber had never before been linked to the amount of investment, which for the VOC had been due to the merger of existing city-companies at its foundation. In the Swedish South Company, Usselinckx introduced a rule similar to the one that was applied in the WIC. Cities or regions with expertise in maritime trade that

invested 300,000 *thaler* were granted a chamber of their own (s. 16). The board of the South Company was assembled accordingly. The board was to consist of twelve directors. Each chamber was to appoint directors according to their share in the company's capital (s. 23). There were as many directors per chamber as there were shares of 100,000 *thaler*. When an investor made an instalment of 100,000 *thaler* by himself, or when investments were bundled in order to reach this threshold, the investors were given two directors of their own (s. 5). This latter direct representation was absent in the 1621 WIC, even though Usselinckx had proposed it in the Netherlands in 1619.[82]

The fact that chambers were introduced in Swedish companies has been labelled as unpractical and alien to Swedish tradition,[83] but in fact, in so doing Usselinckx conformed his plans to the royal policy of stimulating trade through the cities in Sweden. What was more stubborn than the organisation in chambers was the fact that chambers were created according to the level of investment, which did not account for the expertise that was required for equipping ships. In addition, the amounts required were very high, and in practice no additional chambers were created.[84] Moreover, the integration of chambers' finances, which in the Netherlands had been accomplished by 1617, was ignored. Usselinckx continued to provide that damages caused by directors, who were responsible for signing contracts, were not to be borne by the company, but only by the director, and – in subsidiary order – by the chamber from which he depended (s. 13).

Usselinckx expanded shareholders' rights. As had been done in the Stockholm Company, chief investors could check the accounts of the company. This was expanded in the charter of the Swedish Trading Company. However, between 1619 and 1624, provisions in Swedish charters became more vague. A second statute of the Swedish Trading Company of 1619 provided that some "qualified" shareholders were given a right of audit at the annual closing of accounts.[85] The charter of 1622 stated that only two chief investors would assist at the annual rendering of accounts, but it did not specify how they were to be selected and appointed.[86] However, Usselinckx' project of November 1624 reinjected ideas regarding participatory governance into Sweden's trade policy. It provided that every year, each investor with a share of minimum 1,000 *thaler* was entitled to be informed as to profits and losses (s. 3). This went much

82 Rees 1868, p. 2, 390–391 (s. 10). This had not been proposed in 1606. See Meijer 1984, "Liefhebbers des vaderlands" p. 54–56.
83 Heckscher 1994, p. 1, 371.
84 Roberts 1958, p. 2, 126.
85 SwTC 1619/2, 720, and 730–731.
86 SwTC 1622, s. 5 and s. 38.

further than the Dutch charters, which stuck to auditing by selected chief investors. Following protests, in 1622 it had been imposed in a new VOC charter that nine representatives of the majority shareholders would exert control over the board of Seventeen Directors and over individual directors of chambers as well. The nine auditors could sit at all meetings of the board and controlled the accounts on a yearly basis.[87] The 1616 Danish East-India Company also defined the (few) shareholders that could participate at the hearing of accounts, but this was an annual task.[88] A charter for the WIC, of June 1623, went further, by installing a committee of chief shareholders that could check books and other documents at any time.[89] The charter of the South Company of 1626 was even more generous to investors. It provided that all investors appointed as many delegates of (chief) investors as they thought fit, and that these auditors could check the accounts "every day" (s. 20). In 1619, Usselinckx had proposed this for the WIC as well.[90]

With regard to the right to appoint directors, Usselinckx clarified positions and strengthened the position of shareholders. Ever since 1615, not much attention had been paid to the selection and appointment of directors, because of the strong supervision of the king. In the South Company, the first directors were in principle appointed by all large shareholders (investing 1,000 *thaler* or more), who voted at a meeting (s. 6). They served six years, after which two-thirds were re-appointed by the chief investors. The other third was to consist of new directors, to be appointed by and from amongst the chief shareholders (s. 7). This clearly reflected Usselinckx' views, which had also inspired changes in the United Provinces. In new charters for the VOC (March 1623) and WIC (June 1623), new rules had been imposed. The result of these changes was that in the VOC all new directors were elected by both directors and chief investors, from amongst the chief investors. In the WIC some directors were chosen and appointed by and from amongst the chief shareholders. Since 1623, directors in both the VOC and WIC had occupied their positions for three years, and no longer for six years as had been the case before.[91] Usselinckx thus envisaged the right of representation for all (large) shareholders, and excluded (broad)[92] voting rights for directors in office. Yet, Usselinckx also struck compromises.

87 VOC 1622, s. 2.

88 s. 22. See also Rindom 2000, p. 102.

89 Heijer 2005, p. 82. This had been proposed in 1606 as well. See footnote 53.

90 Rees 1868, p. 2, 397–398 (s. 33–34).

91 Jongh 2014, p. 95, 101, 108–111; Heijer 2005, p. 82–84; Gepken-Jager 2005, p. 55–56.

92 Of course, directors were investors as well, and because of the requirements of minimum investments for directors they were all chief investors. However, their vote was capped: every shareholder had one vote.

One director was appointed by the King (s. 23), which reflected earlier tendencies of supervision by the monarch. In case of a tie vote, the King's director decided. In the VOC and WIC, the board could decide over all matters, independently from the States-General. The only exception was the waging of war. But even in the WIC of 1621, the States-General had a director of their own.[93]

Since shareholders' rights of control and exit were firmer than before, the duration of the South Company was longer than of previous Swedish chartered companies. In the period 1619–1622, three years had become common, and charters were often renewed every year. But now again – as had been the case in 1607 – a chartered company was set up for a longer period (twelve years). Usselinckx had always dreamt of a long-lasting merchant corporation.[94]

6 Conclusion

William Usselinckx introduced many of his views in Sweden, some of which had gained acceptance in the Netherlands after some strife. In 1627, 1633 and 1639, Usselinckx's combined ideas were re-inserted into Swedish company charters.[95] Usselinckx convinced the Swedish royal entourage to write high rewards for investors into the statutes. Reluctant investment had been an issue in the previous companies, and Usselinckx made the diagnosis that merchants and others had refrained from investing because of the agency problems implied within the older organisational schemes. If directors were appointed by the King, the shareholders not only had no say in this, they could also be confronted with directors who were not knowledgeable in trade. But the South Company failed in spite of the changes made. The company suffered from the same flaws as before. Local directors were not competent.[96] Moreover, the King continued to award monopolies to private companies and individual merchants, thus hollowing out the business of the government's chartered companies.[97]

93 Heijer 2005, p. 1, 123.

94 Rees 1868, p. 2, 387 (s. 2): this 1619 draft for the WIC, which was written by Usselinckx, reads "twenty-four years," but this was struck out and replaced with "twelve years." Eventually, the WIC was set up for twenty-four years.

95 RAS, *Ämnessamlingar, Handel och sjöfart*, no. 49, draft 1627–28 (see footnote 33), and no. 49, draft 21 March 1639 ("*Octroy et privilèges de la compagnie du sud*"). The "*ampliatie*" of the 1626 charter, dating 1633, was published in the *Argonautica Gustaviana*.

96 Roberts 1958, p. 2, 125.

97 Müller 2005, p. 67–68 (on the 1628 monopoly for Louis de Geer for iron gun casting); Van Dillen 1937, p. 213 (on the 1622 monopoly for Thomas Alsten Bloemaert, the brothers de Besche and Paulus Auleander for gun casting).

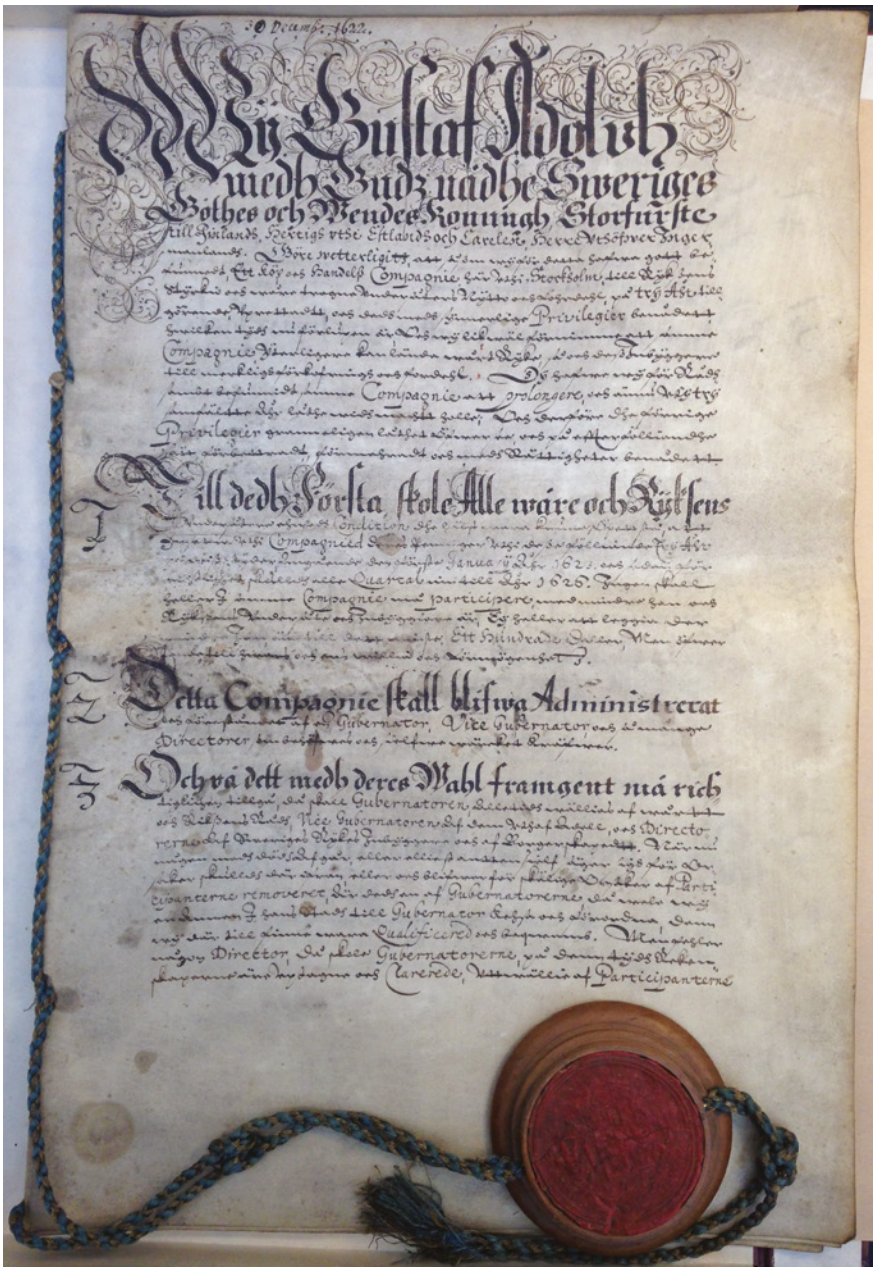

FIGURE 5 The Privilege of the South Company 1622.

Furthermore, in contrast with the Dutch VOC and also the Danish Icelandic company for example,[98] no pre-existing companies could be merged. The Swedish "general" companies had to be started up from nothing, and they did not draw in sufficient capital. The French East India Company of 1604, for example, suffered from comparable constraints.[99] It has been pointed out that the first Swedish companies could not flourish because of unfavourable preconditions, including lack of capital and entrepreneurial expertise.[100] It is evident that the high powers of chief shareholders in the Swedish companies, which were ultimately imposed, had to do with the fact that the ventures were top-down initiatives, an offer of public borrowing, whereas such chartered companies as the VOC could largely ignore shareholder rights because capital was widely available.[101] All this marks a caveat against considering the institutional characteristics of chartered companies as sufficient for generating trade.

Sweden provides an example of a nation that was largely inexperienced when it came to chartered companies. Notwithstanding these disadvantages, the country served as a testing ground for new concepts. It embraced the English idea that directors were to be chosen and appointed by the shareholders. Auditing rights were implemented in Sweden before they gained acceptance in the Netherlands. Swedish chartered companies went further in separating the company from chambers and directors than had been done in the Netherlands, even though the structure of chambers was out-dated when it was introduced in 1626.

The above demonstrates that the development of chartered companies was not a process of transplanting models of organisation, but rather that throughout North-West Europe there was an incessant exchange of ideas. In the understanding of the drafters of projects, it was clear that chartered companies could be successful, but the exact recipe for achieving high revenues remained unclear. The Swedish companies show that policy makers were hesitant, often shifting their approach, and that some formulas of organisation did not per se direct international trade to Swedish ports, even when they were features of successful companies elsewhere. An explanation for the contents of plans can therefore not be (exclusively) economic. Failures ultimately triggered adjustments to economic conditions (e.g. the widening of rights of large shareholders, because investments were limited). But, mostly, incentives were situated at

98 Willerslev 1944, p. 609–610. The Danish East-India Company seems to have been the exception to the rule; it was successful in a first phase and gathered large amounts of stock, mainly from Danish investors: Feldbaek 1981, p. 139–140; Feldbaek 1981, p. 105.

99 Haudrére 1991, p. 9–27. 12.

100 Klein 1981, p. 24–25.

101 Gelderblom, Jong and Jonker 2013, p. 1054.

a political level. An interventionist model of trade policy was emerging, and chartered companies were purported to generate profit. Their statutes were assembled while taking chunks of rules and practices from successful nations. A cultural influence lay in the example of prospering countries. The dominant presence of Dutch merchants was sufficient for the fact that mainly Dutch examples were used for inspiration. However, behind Dutch ideas there were often English views as well.

This prompts the question on the direction of organisational change in the early seventeenth century. The incremental extension of shareholders' rights, both in the Dutch Republic and Sweden, seems to point to convergence. Changes were made in England as well, which invites such a conclusion. By 1657, the EIC had a permanent capital and limited liability of investors,[102] which the Dutch chartered companies had achieved some decades before. Yet it is uncertain whether growing similarities really reflect convergence. This would suppose that the relationship between the organisational structure of companies and economic return was linear and fixed, across large areas. Such a conclusion would also take for granted a certain model of chartered company as ensuring success, and that this was perceived as such by seventeenth-century merchants and administrators. Also, an explanation of this kind would assume a final point in development, which would neglect the adaptability of law to – inevitably changing – economic circumstances. Furthermore, there are many indications that divergence lasted very long, and also with regard to core aspects of corporate organisation. For example, the shareholders' right to a yearly dividend was known in Sweden in 1615, but it took a long time to emerge elsewhere – in this regard, the Swedes were ahead of their times.

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102 Gialdroni 2011, p. 286, 290.

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