"CRISES BRING ISSUES BUT ALSO OPPORTUNITIES THAT CAN SHAPE NEW VIRTUOUS MODELS, ADDRESSING AT LEAST SOME OF THESE ISSUES AND DEVELOPING SOLUTIONS THAT ARE TRANSFORMATIVE AND ENTREPRENEURIAL."

THE FOUNDATION-OWNED COMPANY MODEL: THE PATH TO BUILD TOMORROW'S SOCIETY BY UNIFYING LONG-TERMISM AND PHILANTHROPIC IMPACT

DELPHINE BOTTGE – WWW.PURPOSELAWYERS.CH

There is a little-known model of governance — though it has existed for decades — which allows long-term economic performance while contributing to general interest: the foundation-owned company

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Within a very short period of time, the worldwide pandemic triggered by the novel coronavirus has not only claimed numerous lives but also caused significant economic and societal consequences we shall have to cope with for a long period of time. The size of the shock is shaping the deepest crisis for over a century. We are expecting an unprecedented loss of employment and bankruptcies.

The philanthropy sector is not being spared. This crisis is expected to trigger loss of income for non-profit organisations and jeopardise the very existence of many of them throughout the world (£6.4bn loss of income for UK charities over the next six months, according to research in July by Pro Bono Economics; € 1.4bm for French associations, according to Philippe Jahshan, chair of Le Mouvement associatif; at least CA$9.5bm for Canadian NPOs, according to Imagine Canada, etc.).

Crises bring issues but also opportunities that can shape new virtuous models, addressing at least some of these issues and developing solutions that are transformative and entrepreneurial. More than ever, to face the upcoming challenges, we shall break down the barriers between philanthropy, finance and business, and integrate the concept of long-term ownership. Business should no longer be aimed at short-term profit-maximisation for shareholders, but be considered as a force for common good, integrating the interests of all stakeholders (employees, customers, suppliers, local communities, NGOs, etc) and aligning strategy with the UN Sustainable Development Goals (SDGs). There is a little-known model of governance — though it has existed for decades and is deeply appropriate in our current times — which allows long-term economic performance while substantially contributing to general interest: the foundation-owned company.

Such foundations, according to Prophil research in 2015, most often have a double purpose:

- Economic: ensuring the founder's vision and the longevity of the company; protecting it from hostile takeovers, delocalisation and market fluctuations, based on a stable ownership which allows long-term strategy and management.

- Philanthropic: financing general interest projects (culture, health, education, research etc.) by using the dividends received as a shareholder of the company, in compliance with its statutes prescribed by the founder.

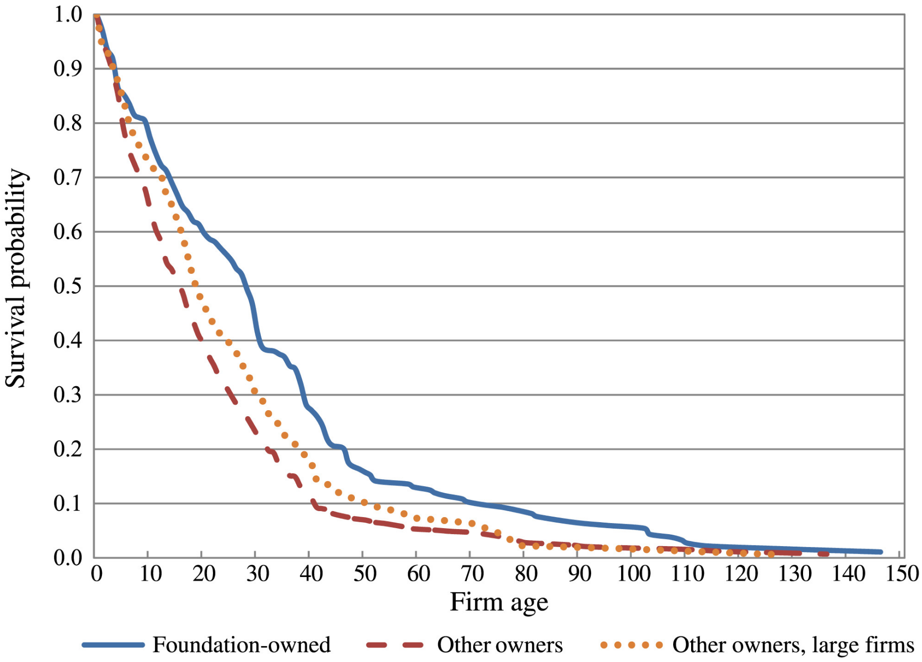
Novo Nordisk, Ikea, Bosch, Lego, Tata, Pierre Fabre and thousands of other companies worldwide, both large and small, are partly or completely owned by foundations. Such structuration is common in Northern Europe. There are nearly 1,000 foundation-owned companies in Germany, 1,000 in Sweden and 1,350 in Denmark, where companies owned by foundations account for 20 per cent of GDP. I identified more than 120 of them in Switzerland, including major companies like Rolex and Victorinox. In France, this model appeared within the last decade and has begun to flourish with the creation of the De Facto community (European Movement in favour of Foundation-owned companies). A mere handful have been identified in the UK.

Foundation-owned firms appear to have a stabilising influence on both employment levels and the local economies in which they operate. Like other foundations, they are formally governed by their statutes, which define their governance and purpose, the most common ones being combined: ensure the perpetuation of the company, act for the benefit of the employees and support general interest causes.

Legally, shareholder foundations are sustainable with most often an obligation to preserve their endowment (i.e. the company). As a unique or at least relevant shareholder, they influence the operation of the company and take part in strategic decisions. In his 2003 research into Danish Industrial Foundations, Professor Steen Thompsen, of the Copenhagen Business School noticed that, *"all else being equal, a foundation-owned firm would be less likely to renege on implicit contracts with employees or other firms because it values the extra profits less highly. Foundation charters indicate that they often make special provisions regarding the use of high ethical standards in business conduct, including for the welfare of employees or for product quality."*

Shareholder foundations play a significant role in philanthropy in the communities in which they operate. Using perceived dividends directly for donations multiplies the philanthropic short-term outcome while, in the meantime, reinvestment in the company leads in the long run to a stronger capital base, which has a positive long-term effect on donations.

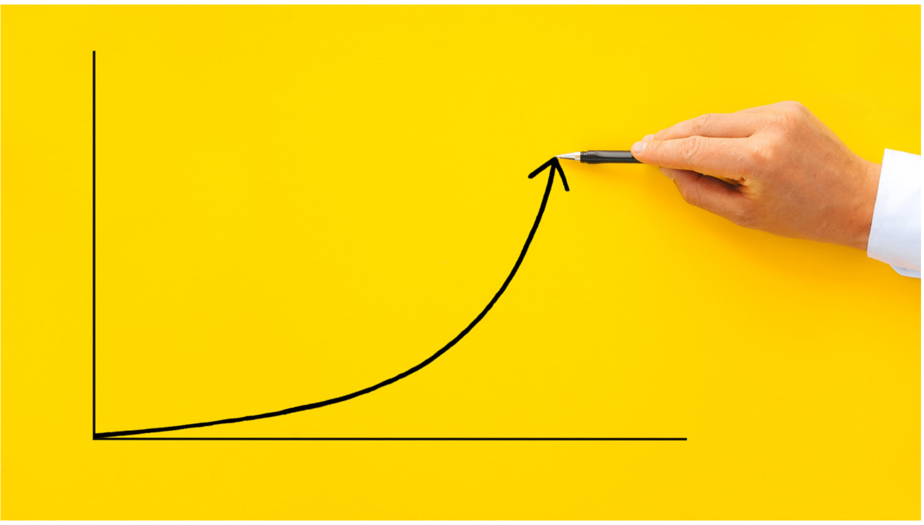
"FOUNDATION-OWNED FIRMS APPEAR TO HAVE A STABILISING INFLUENCE ON BOTH EMPLOYMENT LEVELS AND THE LOCAL ECONOMIES IN WHICH THEY OPERATE."



A study by Steen Thompsen, Thomas Poulsen, Christa Borstling and Johan Kuhn shows that foundation-owned companies have a longer lifecycle than others:

Examining this Kaplan-Meier survival curves graph, they conclude that:

- *"The probability of surviving beyond 40 years is 30 percent for foundation-owned firms and 10 percent for other firms. The survival probability is always higher for foundation-owned firms."*
- *"Foundation-owned firms have higher survival rates even after the first 30 years. Among the non-foundation-owned firms, 80 per cent of the remaining population at age 30 is gone at age 60, while only 30 per cent of the foundation-owned population at age 30 is gone at age 60."*



"WOULD A FOUNDATION BE PARTICULARLY GOOD AT REACTING QUICKLY, DECISIVELY AND CREATIVELY TO ACUTE BUSINESS SITUATIONS?"

Therefore, we could assume that during times like an economic downturn or a financial crisis, foundation-owned companies could better leverage their resources to maintain their activities and be more resilient. Foundation ownership might, however, be a challenge for such a structure as crises typically require fast and decisive decision-making. Would a foundation be particularly good at reacting quickly, decisively and creatively to acute business situations?

Thompsen analysed the performance of Danish foundation-owned companies, between 2008 and 2010, and concluded that they are as efficient as traditional investor-owned family enterprises.

Professor Arthur Gauthier, of ESSEC, interviewing Virginie Seghers, of Prophil, recently, gave examples of resilience throughout the 2008 crisis outside Norway, like Bosch in Germany, held by a foundation up to 92 per cent since 1964, which avoided mass redundancies in 2008, and increased its turnover by 24 per cent in 2010, while keeping a strong philanthropic action throughout its shareholder foundation.

Professor Isaac Getz, of ESCP, and team learning specialist Laurent Marbacher explained how Handelsbanken, a major foundation-owned bank in Sweden, served its clients during spring 2020 and maintained profitability at a level that is among the highest in the sector. Its stock price has been multiplied by 1.9 million since 1900, representing the largest increase worldwide during this period.

Policymakers, business owners and managers interested in promoting long-term governance models should therefore reconsider the role of ownership structure and draw on this model of foundations with the ambition of transcending the usual capitalistic schemes, acting as a lever for the transformation of companies and addressing more substantially some of the issues we have to face today and tomorrow: both developing sustainability, employment security, labour standards, product quality within companies and ensuring financial resources for philanthropic action. This raises the question of whether and how foundation-ownership should be facilitated in countries like the US and UK where this model is currently scarce.

DELPHINE BOTTGE – FOUNDING PARTNER, PURPOSE LAWYERS

Delphine Bottge, lawyer at the Geneva Bar, has specialised in philanthropy law for more than 15 years and founded Purpose Lawyers in 2020. She advises on legal structures for general interest projects (incorporation of foundations, associations and hybrid structures profit / non-profit) and on the legal framework of such projects (donation agreements, public-private partnerships, governance). She also accompanies donors, foundations and companies in their strategy, based on a long-term vision, sits on several boards of foundations and conducts training and conferences.

As an Academic Fellow of the Centre for Philanthropy of Geneva University, she is currently conducting research on the topic of foundation-owned companies and gives lectures on the governance of foundations.