

SHAREHOLDER FOUNDATIONS (HOLDING FOUNDATIONS) IN SWITZERLAND

Overview from a legal perspective

Companies held by foundations, such as Rolex, Victorinox, Sandoz, Ikea, Bosch, Lego and Carlsberg, are of considerable economic importance in Northern Europe, as well as in Switzerland, although they are still largely unknown and seldom used there. This article proposes a functional definition of the shareholder foundation under Swiss law and raises some of the legal and tax issues involved [1].

1. DEFINITION AND CRITERIA

1.1 Definition. The terms “shareholder foundation” and “holding foundation” do not have a specific legal definition under Swiss law. Instead, Article 80 of the Civil Code (CC) [2] generally provides that “A foundation is established by the endowment of assets for a particular purpose”. As a working hypothesis for the purposes of this paper, we have adopted the following definition based on Swiss Federal Supreme Court [*Tribunal fédéral*] case law [3]: a holding foundation (also known as a shareholder foundation), irrespective of its purpose, is a foundation which holds a significant interest in one or more commercial undertakings [4].

Swiss legal literature generally uses the term “holding foundation” to describe this type of set-up, however we prefer the term “shareholder foundation”, in keeping with some authors [5] and the First European Study carried out by the French firm Prophil in 2015 [6]. Moreover, in Swiss tax law, the term “holding” refers to a company whose sole purpose is to hold equity interests, which is very rarely the case with the foundations we are dealing with here (see *infra* 1.2.2).

1.2 Criteria. Since the concept of a shareholder foundation is not uniformly employed, this article endeavours to offer a *functional definition* designed to address some of the legal and tax issues involved in this type of entity. In this respect, we propose the following criteria:

1.2.1 Endowment of assets that have legal personality. In the case of shareholder foundations, there are two possible scenarios:

1) a foundation is established by a founder-entrepreneur who wishes to transfer all or part of his holdings in a company to the foundation. This would involve the founder divesting himself of the assets concerned; 2) a pre-existing foundation acquires interests in a company, either by receiving holdings, or by establishing a company to engage in activities which generate income.

1.2.2 Special purpose. A shareholder foundation may have a *general interest purpose*. Usually considered as such are purposes of a philanthropic, humanitarian, healthcare, ecological, educational, scientific or cultural nature [7]. Holding interests would therefore be one of the ways in which the foundation could achieve its purpose, thanks to the dividends it receives as a shareholder. This model encourages philanthropists and social entrepreneurs to give all or part of their holdings in a company to a foundation. It can also encourage foundations to transfer income-generating activities to subsidiaries in order to contribute to the foundation’s own financial sustainability. The foundation can also directly fulfil its purpose via the economic activities of a company in which it holds a “significant” interest. This is particularly the case for companies which operate structures related to the foundation’s purpose (hospitals, sports or cultural centres, social inclusion projects, etc.) or which provide property for use in the foundation’s operation.

Nowadays it is accepted that a shareholder foundation can have an *economic purpose* [8]. This is the case if the foundation’s purpose is to perpetuate the company and it reinvests all net profit in that company [9]. Legal literature also recognises an economic purpose when its benefits “are paid unconditionally and without compensation to a limited circle of people” [10].

In the above cases, the foundation’s governing document (Articles) generally contains a provision forbidding the transfer or sale of the holding, other than for reasons of economic necessity.

Finally, a shareholder foundation may have a *mixed purpose*, combining the above two purposes [11]. This is frequently



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the case, although in reality it is not always easy to determine which one takes precedence since the two are often interrelated [12]. Indeed, all too often stakeholders confuse a foundation's economic activity (for a shareholder founda-

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tion, the fact that it holds interests) with its purpose. The holding of interests by a foundation should primarily be regarded as a matter of fact, a means used to achieve its purpose, which is expressly and exhaustively set out in a specific article in its governing document.

1.2.3 Subject to supervision. Foundations under Swiss private law, with the exception of family and ecclesiastical foundations, are placed under the supervision of a state authority, which can be federal, cantonal or municipal depending on the foundation's purpose. As provided by Article 84(2) CC, the supervisory authority must ensure that the foundation's assets are used for their declared purpose. Supervision covers both the management and the use of assets. We therefore question the extent and even the relevance of the supervision of shareholder foundations in certain cases (see *infra* 2.1.).

1.2.4 Holding a significant interest in one or more commercial undertakings. Attempts to define this characteristic, common to all shareholder foundations irrespective of their purpose, meet with the same difficulties as those encountered when trying to define it, more generally, in company law [13]. There is no consensus in legal literature as to a set level of participation [14], although it would need to be a “significant” interest. It appears nonetheless that the essential criterion would be control, which carries with it “the ability to influence the operation of the company” [15]. This would be obvious in cases where the foundation holds all the shares in the company. For some authors, the criterion is a shareholding of at least 20% [16], yet that is merely the level which the lawmakers set, in Article 960d(3) CO, for raising a presumption of significant influence over the company. But does adhering to this criterion alone not exclude otherwise relevant cases? Could we also consider foundations which hold significant dividend rights, but not voting rights? What about a foundation whose purpose, which is innovative and serves the public interest, is to preserve the social mission of companies, and which in order to achieve that goal holds a single share in those companies with a right of veto over that mission [17]? We would suggest a more nuanced approach, since a functional definition must be flexible, especially when its pur-

pose is to query the virtuous nature of this model and its ability to succeed and grow in Switzerland under existing law. Tackling a particular constraint or concern, whether it be fiscal or related to the oversight or governance of such foundations, may require a more refined definition or other more specific criteria.

1.3 Statistics and actuality in Switzerland. Every year, the CEPS [18] publishes statistics on the number of foundations and the areas supported by foundations with a general interest purpose, but offers no information about the number of shareholder foundations. This is hardly surprising, given that the Swiss foundation environment makes it difficult to carry out such a survey, for various reasons. Other than the very broad definition established by the Swiss Federal Supreme Court, there is no consensus as to what specific criteria would define a shareholder foundation. The FADP [19] limits the disclosure of data by supervisory authorities, although it is doubtful whether such authorities would have uniform criteria for identifying and classifying shareholder foundations. Be that as it may, although it may be possible to identify the number of foundations in Switzerland, there is no way of knowing the exact number of foundations with recognised “public interest” status, since decisions regarding tax exemption are not made public. Finally, one might question the inclination to communicate information about companies held by shareholder foundations or about the foundations themselves. There was, however, a study carried out in 1997 by Roger Schmid [20] containing a survey of shareholder foundations, which listed less than one hundred in Switzerland. However, one should bear in mind that 1) the criteria applied by Roger Schmid were more restrictive than the ones we use here; 2) he only dealt with companies with a share capital of over CHF 1 million or which had, according to his own assessment, “economically attractive interrelationships”, 3) and in which 20% of the equity interests were held by foundations; 4) several foundations or companies surveyed have been liquidated since 1997; 5) new foundations have been formed or have acquired holdings since then [21].

Still, we would mention the foundations Hans Wilsdorf, Ethos in Geneva, the DSR foundation in the Canton of Vaud, Jacobs Stiftung, Vontobel Stiftung, Lindt Cocoa Foundation in Zurich, Ernst Gühner Stiftung in Zug, and Dätwyler Stiftung in Uri.

2. LEGAL AND TAX ISSUES

2.1 Supervision. The supervision of foundations, which has been the centre of debate in Switzerland for several years, raises a number of questions about the extent and relevance of such supervision.

2.1.1 Extent of supervision. It may be useful to examine this issue in the light of *financial reporting law*. Under Article 963 CO, “Where a legal entity which is required to file financial reports, controls one or more undertakings that are required to file financial reports, the entity must prepare consolidated annual accounts (consolidated accounts) in the annual

report for all the undertakings controlled”. The mere possibility of exercising control is sufficient to require that consolidated accounts be kept, within the meaning of this provision, whether or not such control is actually exercised.

Foundations may transfer the obligation to prepare consolidated accounts to a controlled company (which we will call an intermediate holding company) if it includes all the other companies under a single management through a majority of the votes, or in some other way, and it proves that it has effective control over them [22]. In certain instances, a foundation may not be obligated to prepare consolidated accounts (this depends, in particular, on its balance sheet, revenue and number of employees) [23]. Nevertheless, the supervisory authority may waive such exemption and require the foundation to prepare consolidated accounts [24].

In view of the above, and bearing in mind the principles of proportionality and subsidiarity [25], one might ask whether the supervision of shareholder foundations justifies the competent authority having access to the organisation and financial statements of the companies held [26]. This question deserves to be explored, in each case taking into account the specific structure (e.g. the existence of an intermediate holding company).

2.1.2 The relevance of supervision. In general, two main reasons are given as grounds for state supervision of foundations: the protection of the founder’s intentions (since foundations have no shareholders and no members to control their management), and the protection of public interest (as foundations usually pursue general interest purposes, there is an interest in ensuring that the assets are being used for their declared purpose) [27]. One can therefore question the relevance of imposing state supervision on shareholder foundations which have a purely economic purpose and basically do not pursue a public interest purpose (see supra 1.2.2).

These issues are particularly relevant given that, in an increasingly complex environment in which they may lack resources [28], there is a tendency for supervisory authorities to be more restrictive. This, in general, could run counter to the freedom of foundations “which was the biggest step forward in Swiss law on foundations” [29] and, in the case of shareholder foundations, lead to state influence over companies operating in the private sector. Considering the above, would it not be appropriate to reconsider the supervision of shareholder foundations, by envisaging an alternative? This could include supervision confined to foundations pursuing, even in part, a public interest purpose [30], or supervision grouped under a single authority with the specific expertise required to understand such entities and the issues involved, for example by placing all shareholder foundations under federal supervision.

2.2 Tax law. Can shareholder foundations benefit from tax exemption? While Articles 56g LIFD/BBG [31] and 23(1)(f) LHID/StHG [32] state that “in principle, economic purposes cannot be considered to be of public interest”, they add that “the acquisition and administration of significant equity interests in companies are of a public interest nature when the

interest in perpetuating the undertaking is secondary to the public interest purpose, and no management activities are undertaken”. Shareholder foundations can therefore rely on these provisions to obtain tax exemption, provided that they fulfil the other conditions for exemption of foundations

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listed in Circular No. 12 of 8 July 1994 [33]. In short, exemption for reasons of public interest presupposes, cumulatively, that: 1) the foundation pursues a public interest purpose; 2) its purpose is altruistic; 3) the funds are irrevocably assigned and exclusively used for that purpose and 4) it effectively pursues its purpose.

Circular No. 12 adds a further condition for shareholder foundations: “the law expressly states that economic purposes are not, in principle, public interest purposes. Pure capital investments – even interests of more than 50% in companies – are no longer an obstacle to tax exemption status, where such investments do not have the ability to influence the management of the company. This is particularly the case when a legal entity holds voting rights. Thus, the equity interest must not allow the holder to influence the economic activity of the company concerned, which implies a clear separation between the board of trustees and the board of directors (which must therefore be independent of each other), even if a liaison person is tolerated.”

The Circular also states that in the case of a substantial holding, “the law requires that the interest in perpetuating the undertaking be subordinated to the public interest purpose. The controlled undertaking must therefore provide regular and substantial contributions to the foundation, which must effectively devote them to an altruistic activity which serves the general, i.e. public interest”. It follows that, while shareholder foundations with a purely economic purpose, for example, whose sole purpose is the perpetuation of a company or group of companies, are not eligible for tax exemption, shareholder foundations which have a public interest purpose, even if only in part, can, at least in theory, benefit from tax exemption status (total or partial depending on the case). In reality, the tax administration will examine the Articles, and more importantly, how the shareholder foundations operate in practice, when determining their tax status.

Nonetheless, Circular No. 12 constitutes a serious restriction on the freedom of activity of shareholder foundations and is a deterrent to the development of new shareholder foundations in Switzerland. Indeed, one might ask whether the governance rules that it imposes (particularly the strict separation between the board of trustees and the board of directors, except for a liaison person) do not run counter to

the principles of good governance and risk management, by prohibiting *de facto* shareholder representation on the board of directors. As we mentioned above, the latter is responsible for oversight of the company and not for the managerial tasks, which are assigned to the executive management. The question is still open.

Be that as it may, in practice, these requirements impose an element of inflexibility which is inconducive to dynamic en-

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trepreneurialism and are likely to dissuade entrepreneurs concerned with the effectiveness of their project in combining the company’s long-term survival with public interest [34].

2.3 Governance. The question of governance in shareholder foundations is closely linked to the tax considerations discussed above. While a non-exempt shareholder foundation with an economic purpose is free to determine its ties with the company, this is not the case, as we saw above, for exempt foundations. This point is of particular relevance in the case of shareholder foundations with a mixed purpose. In general, governance issues will involve the skills and expertise which the board of trustees must attract, depending on the declared purpose, the organisation of the ties between the foundation and the company it holds, and the managerial distance between the two entities.

2.4 Inheritance law. Any initial endowment or subsequent contribution to a foundation implies a divestiture of the property assigned to the foundation, whether by gift *inter vivos* (Article 239 CO) or testamentary disposition within the meaning of Article 245 CO [35]. Under Swiss inheritance law, the testator’s freedom to endow the foundation is restricted to the disposable portion of the estate (Article 493(1) CC). Thus, the transfer of an interest in an undertaking to a foundation, whether by way of an *inter vivos* gift or a bequest, is subject to abatement if it prejudices the reserved portion (Articles 475 and 527 CC). Sometimes, the existence and the size of the reserved portions can discourage entrepreneurs from contemplating a shareholder foundation, insofar as their aggregate assets, independent of the undertaking, would not be sufficient to indemnify the heirs entitled to a reserved portion. The only way out of that situation would be to conclude an inheritance contract [*pacte successoral*], whereby the heirs would expressly renounce their rights. However, this is a complex process in some family circles. The draft revision of inheritance law provides for a reduction in the reserved portions, which could facilitate the creation of shareholder foundations in Switzerland [36].

3. COMPARATIVE PERSPECTIVE AND RELEVANCE OF THE MODEL

Shareholder foundations are common in Northern Europe where there are a number of constants: 1) absence of rules guaranteeing the rights of heirs; 2) favourable tax environment; and 3) country has a social framework which encourages philanthropic entrepreneurs to “give back”. There are nearly 1,000 “*Unternehmenstiftungen*” in Germany, 1,000 “*business foundations*” in Sweden and 1,350 “*commercial foundations*” in Denmark, where the companies owned by foundations account for 20% of the GDP [37]. Nevertheless, the ways in which they function and the issues involved vary widely depending on the country, but Switzerland can learn from them.

Thus, Danish legislation uses various criteria for qualifying shareholder foundations [38] and imposes specific supervision [39]. Danish shareholder foundations are subject to specific governance recommendations which prescribe rules on the composition of the respective boards, which allow for broader shareholder representation than under Swiss law [40]. Moreover, in Denmark, shareholder foundations will generally hold voting rights and a share of the dividend rights along with third-party investors (Novo Nordisk, A.P. Moller-Maersk and Carlsberg).

In Germany, on the other hand, shareholder foundations usually hold dividend rights in parallel with a fiduciary company which holds the voting rights (Robert Bosch Stiftung). In France, the PACTE (Action Plan for Business Growth and Transformation), passed in first reading in the National Assembly on 9 October 2018, raised a debate about the relevance of the concept and its embodiment in French law [41]. The development of and interest in this model, which addresses issues related to the new economy and the desire to combine philanthropic and economic aspirations, led to the first European study, carried out by Prophil in 2015 [42].

Foundation ownership is indeed a challenge to traditional theories about companies [43]. Some authors doubt whether a foundation is a suitable form for operating a company that

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needs dynamic decision-making [44]. Yet it is a stable and sustainable ownership model, in keeping with the new economic vision that we know today, generating value creation not only for the shareholders, but for all stakeholders, which has moved from short-term thinking to a long-term vision. Switzerland offers several types of shareholder foundations, which could prove to be an effective instrument for perpetu-

ating an entrepreneur's vision, preventing hostile company takeovers, developing general principles on company policy (staff welfare, job protection, dividend distribution, etc.) and guaranteeing a company's independence or editorial freedom in the media [45]. And above all, for creating a vir-

tuous model, linking family considerations with economic and philanthropic issues, in which the foundation will ensure the continuation of the company which in turn will contribute, through its dividends, to the development of philanthropic projects. ■

Footnotes: 1) This article has been prepared in connection with research we are conducting at the Geneva Centre for Philanthropy, University of Geneva (www.unige.ch/philanthropie). 2) Swiss Civil Code of 10 December 1907 (Status at 1 January 2018), RO 24 245 (hereafter "CC"). 3) Decision of the Swiss Federal Supreme Court of 18 May 2001 published in ATF 127 III 337 = SJ 2002 I 193. C. 2. a) "...ist massgeblich an einem wirtschaftlichen Unternehmen beteiligt". 4) Under the general term "Unternehmensstiftung", legal literature distinguishes two types of foundations: one which itself operates a commercial undertaking (Unternehmertrügerstiftung) and one which holds significant interests in other legal entities carrying on a commercial activity (Holdingstiftung). In this regard, see Arthur Meier-Hayoz and Peter Forstmoser, *Droit suisse des sociétés*, Bern (Stämpfli) 2015, p. 855 § 23 N 10. 5) For example, Loïc Pfister, *La fondation*, Zurich (Schulthess) 2017, p. 56 N. 187. 6) Prophil, *Shareholder Foundations, the First European Study in consultation with Delsol attorneys and Essec Philanthropy Chair*, 2015. 7) Federal Tax Administration, "Exonération de l'impôt pour les personnes morales poursuivant des buts de service public ou de pure utilité publique (art. 56, let. g LIFD) ou des buts culturels (art. 56, let. h LIFD); déductibilité des versements bénévoles (art. 33, 1^{er} al, let. i et art. 59, let. c LIFD)", Circular No. 12, 8 July 1994; see also Nicolas Urech, *Commentaire romand de la loi sur l'impôt fédéral direct*, (Helbing Lichtenhahn) 2008, p. 698 N. 61. 8) ATF 127 III 337 = SJ 2002 I 193 in which the Swiss Federal Supreme Court held that "Die Rechtsgeschäftsfreiheit allgemein und die Stiftungsfreiheit im Besonderen lassen eine Beschränkung auf ideale Zwecke nicht zu". The Swiss Federal Supreme Court held that the "holding foundation" structure chosen in this particular case by the founder in order to protect the company from family infighting and provide it with a unique focus so as to ensure its continued existence, could not be criticised. 9) "En fait, dans ce cas, la fondation devient sa propre destinataire, son but se confondant avec son patrimoine.", Parisima Vez, "Les sous-ensembles flous de la fondation" in *Une empreinte sur le Code Civil*, Mélanges en l'honneur de Paul-Henri Steinauer, Bern (Stämpfli), 2013. See also Hans Michael Riemer, *Berner Kommentar*, t. I/3/3, 3rd ed., Bern 1975 (reprint 1981), ST N. 392. 10) Parisima Vez, *La fondation, lacunes et droit désirable*, Bern (Stämpfli) 2004, p. 56; Harold Grüninger, *Die Unternehmensstiftung in der Schweiz: Zulässigkeit, Eignung, Besteuerung*, Basel (Helbing & Lichtenhahn), 1984, p. 46; Arthur Meier-Hayoz and Peter Forstmoser, *op. cit.*, cite the example of Willy A. Bachofen AG § 23 N 29 p. 859. 11) Florian Zihler, "Zulässigkeit von Holdingstiftungen aus der Sicht der Handelsregisterbehörden", *REPRAX* 2/2018, p. 69 ff, which considers that the purpose of a shareholder foundation can be mixed, which is the most frequent case, or economic. 12) Roger Schmid, *Die Unternehmensstiftung im geltenden Recht, im Vorentwurf zur Revision des Stiftungsrechts und im Rechtsvergleich*, Zurich (Schulthess) 1997, p. 18 ff. See the example of "Elisabeth und Leo Henzirohs-Studer-Stiftung", owner of "Jura Henzirohs Holding SA". 13) For definition in company law, see Henry Peter, *L'action révocatoire dans les groupes de sociétés*, Basel (Helbing & Lichtenhahn), 1990, p. 35 ff. 14) Roger Schmid, "Die

Unternehmensstiftung im geltenden Recht" in *Vorentwurf zur Revision des Stiftungsrechts und im Rechtsvergleich*, Zurich (Schulthess) 1997, p. 18 ff. 15) Parisima Vez, *La fondation: lacunes et droit désirable*, Bern (Stämpfli) 2004, p. 56. 16) For a shareholding giving the right to at least 20% of the voting rights, see Roger Schmid, "Die Unternehmensstiftung im geltenden Recht" in *Vorentwurf zur Revision des Stiftungsrechts und im Rechtsvergleich*, Zurich (Schulthess) 1997 p. 18 ff. 17) See, for example, the Purpose Foundation (Basel), which defends the concept of "steward owned companies", founded on two principles – a company's profits are a means and not an end, and the ownership of a company is that of the stakeholders. <https://purpose-economy.org/en/>. 18) Center for Philanthropy Studies, University of Basel (CEPS), *SwissFoundations, Center for Foundation Law*, University of Zurich, *Swiss Foundation Report* 2018, Vol. 19, p. 6. 19) Federal Act on Data Protection (FADP) of 19 June 1992. 20) Roger Schmid, "Die Unternehmensstiftung im geltenden Recht" in *Vorentwurf zur Revision des Stiftungsrechts und im Rechtsvergleich*, Zurich (Schulthess) 1997, p. 18 ff. 21) Although their number is difficult to estimate, there is reason to think that it has increased, particularly in light of current interest in hybrid entities and the number of Swiss family businesses concerned by intergenerational transmission issues. 22) Article 963(4) CO. 23) Article 963a(1) CO. 24) Article 963a(2)(4) CO. 25) Loïc Pfister, *La fondation*, Zurich (Schulthess) 2017, p. 207 N 802. 26) The supervisory authorities' regulations usually state that they are invested with "the most extensive powers" [(Article 3(1) of the Règlement sur la surveillance des fondations de droit civil et des institutions de prévoyance du 29 mars 2012 – RSFIP-Surv (ASFIP Geneva)] or are entitled to request "in addition to the documents that must be sent to it, (...) other information, reports and documents" [(Article 18 of the Règlement sur la surveillance LPP et des fondations, RLPPF of 12 May 2017 (Autorité de surveillance AS-SO)]. 27) Parisima Vez, *La fondation: lacunes et droit désirable*, Bern (Stämpfli) 2004, p. 205. 28) Dominique Jakob, "Bref diagnostic du cas autorité de surveillance" in *Swiss Foundation Report* 2018, Center for Philanthropy Studies of the University of Basel (CEPS), *SwissFoundations, Center for Foundation Law*, University of Zurich, Vol. 19, p. 21. 29) Dominique Jakob, "Bref diagnostic du cas autorité de surveillance" in *Swiss Foundation Report* 2018, Center for Philanthropy Studies of the University of Basel (CEPS), *SwissFoundations, Center for Foundation Law*, University of Zurich, Vol. 19, p. 21. 30) In this regard, see *obiter dictum* of the Swiss Federal Supreme Court in the case law published in ATF 127 III 337 2. c. 31) Federal Act on Direct Federal Tax (Loi fédérale sur l'impôt fédéral direct) of 14 December 1990 (LIFID) RS 642.11. The same applies for exemption from cantonal corporate income tax and capital tax, e.g. for Geneva Canton, Article 9(1)(f) of the Corporate Tax Act (Loi sur l'imposition des personnes morales) of 23 September 1994, D 3 15 (LIPM). 32) Federal Act on Harmonisation of Direct Cantonal and Municipal Taxes (Loi fédérale sur l'harmonisation des impôts directs des cantons et des communes) of 14 December 1990, RS 642.14. 33) Federal Tax Administration, Circular No. 12, "Exonération de l'impôt pour les personnes morales poursuivant

des buts de service public ou de pure utilité publique (art. 56, let. g LIFD) ou des buts culturels (art. 56, let. h LIFD); déductibilité des versements bénévoles (art. 33, 1^{er} al, let. i et art. 59, let. c LIFD)", 8 July 1994, II 3. c), p. 4. 34) In practice, an intermediary holding company is often formed to exercise control over the management of the company, whereas the foundation, funded by dividend payments from the holding company, focuses on the foundation's philanthropic activity. 35) Whether it is by designating the foundation as the heir (Art. 483 CC), bequeathing a legacy to the foundation (Art. 484 CC), a charge imposed on an heir or legatee (Art. 482 CC), or an inheritance contract (Art. 468 CC). Under Art. 493 CC, assets of an estate can also be bequeathed to a future foundation (inheritance foundation) on the basis of the testamentary document (will or inheritance contract). 36) See 3 below "Comparative perspective and relevance of the model". It can be seen that the countries in which shareholder foundations are common do not have this mechanism for protecting heirs. 37) Prophil, *Shareholder Foundations, the First European Study, in consultation with Delsol attorneys and Essec Philanthropy Chair*, 2015. 38) In Denmark, a foundation will be classified as "commercial" once 10% of its total income is derived from dividends from its subsidiaries. 39) The entity responsible for supervision is the Danish Business Authority under the Ministry of Business and Economy. 40) See recommendations 2.3.5 and 2.4.1, in accordance with the "comply or explain" principle, on the composition of the respective boards, "Recommendations on Foundation Governance", December 2014. <https://godfondsledelse.dk/sites/default/files/recommendationonfoundationgovernance.pdf>. 41) In addition to the shareholder public-interest foundations (fondation reconnue d'utilité publique [FRUP]) and shareholder endowment funds (fonds de dotation actionnaire), the National Assembly adopted the amendment of the PACTE Act creating a fund for economic sustainability (fonds de pérennité économique), which is a hybrid model inspired by Nordic shareholder foundations, whose intended purpose is to reconcile economic objectives and actions in the general interest. It should be noted that at the time of writing this article, the bill had not yet been passed into law. Assemblée nationale, Amendement no. 2426, 14 September 2018, <http://www.assemblee-nationale.fr/15/amendements/1088/CSPACTE/2426.asp>. 42) Prophil, *Shareholder Foundations, the First European Study, in consultation with Delsol attorneys and Essec Philanthropy Chair*, 2015. 43) In this regard, see the article by Henry Peter, Vincent Pfammatter, Delphine Bottge and Livia Ventura "Profit and Non-Profit Purposes: Can Legal Entities Serve Two Masters at Once?", published in this same issue of *Expert Focus*. 44) Arthur Meier-Hayoz and Peter Forstmoser, *Droit suisse des sociétés*, Bern (Stämpfli) 2015, p. 855 § 23 N 12. 45) We can also question the fragile limits between economic and general interest purpose, and the difficulties in qualifying each case. Examples include the Carl Oechslin Stiftung for the newspaper Schaffhauser Nachrichten, and the Stiftung Presseverein und Walliser Bote, whose objective is to promote the press of the Haut-Valais region and, as owner of "Walliser Bote", is responsible for publishing this newspaper.