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Enterprise Foundations: Law, Taxation, Governance, and Performance

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ABSTRACT

Enterprise foundations are foundations, which own companies. While this structure is little known outside Northern Europe, a number of leading global companies such as Robert Bosch, Rolex, Carlsberg, Hershey, Ikea, the Wallenberg sphere or the Tata Group are ultimately owned by foundations. Aside from their economic significance, enterprise foundations have interesting governance characteristics including long-term ownership, the absence of a personal profit motive and the combination of business and philanthropy. Recently, they have attracted attention as a safeguard for a company purpose. In this monograph, we review the limited, but growing literature on the topic focusing on law, taxation, governance, and performance. We conclude by considering policy implications and avenues for research.

Keywords: enterprise foundations; economic performance; law; sustainability; corporate governance.

1

Introduction

Enterprise foundations are foundations that own companies. The foundations are independent self-governing entities without owners. The companies may be active in any private business activity. Other terms used to describe the same phenomenon are “industrial foundations”, “corporate foundations”, “commercial foundations”, “business foundations”, “commercial non-profits”, “foundations with corporate interests”, “Unternehmensträgerstiftungen” (Germany), “Unternehmensstiftungen” (Lichtenstein), “fondations actionnaires” (France), “erhvervsfonde” (Denmark). We use here what we believe to be the most generic term: “enterprise foundations” (Hopt and von Hippel, 2010) with the same meaning as the term “industrial foundations” (Thomsen, 2017).

The owners are foundations or functionally equivalent entities – Stiftungen, trusts, fonde, Stichtingen, fondazioni, fondaciones etc. – whose names reflect their legal and national origins. The defining feature is that the foundation owns and controls the company and not vice versa. This means that the vast majority of corporate foundations around the world – who do philanthropy on behalf of a company – are not enterprise foundations. Moreover, the way we define them,
enterprise foundations are private entities and not governmental or quasi-governmental institutions. We provide more detail in Section 2.

Around the world, some very big companies are owned by foundations including the Indian Tata Group, the Swedish Wallenberg businesses, US Hershey, German Robert Bosch, or Swiss Rolex. However, nowhere are they as common as in Denmark, where they account for about half of domestic stock market capitalization. Foundations own three of the four largest Danish companies – A. P. Møller-Maersk, Novo-Nordisk, and Carlsberg. Below we provide a list of 20 foundation-owned companies around the world.

<table>
<thead>
<tr>
<th>20 Foundation-Owned Companies around the World</th>
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<td>A. P. Møller-Mærsk – Denmark</td>
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<td>Anheuser Busch Inbev – Belgium</td>
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<td>Bertelsmann – Germany</td>
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<td>Robert Bosch – Germany</td>
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<td>CaixaBank – Spain</td>
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<td>Carl Zeiss – Germany</td>
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<td>Carlsberg – Denmark</td>
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<td>The Guardian – UK</td>
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<td>Hershey – USA</td>
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<td>Kavli – Norway</td>
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<td>Kuehne + Nagel – Switzerland</td>
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<td>Lloyds Register – UK</td>
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<td>Norske Veritas (DNV GL) – Norway</td>
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<td>Novo Nordisk – Denmark</td>
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<td>Pierre Fabre – France</td>
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<td>Rolex – Switzerland</td>
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<td>Tata Sons – India</td>
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In addition to their economic and social significance as owners of large companies, enterprise foundations are interesting because their unique
Introduction

corporate governance structure challenges conventional corporate governance principles. This gives rise to a number of interesting research questions, which we list below.

(1) Enterprise foundations have no residual claimants and thus in a certain sense do away the profit motive, which features so prominently in neoclassical microeconomics and agency theory. On the other hand the foundations themselves are residual claimants in the companies that they own and from which they get their income. How does that effect the efficiency and economic performance of foundation-owned companies? Is it possible to have efficient firms without a conventional profit motive? Could it even be advantageous under some circumstances? The answer we give in this monograph is yes.

(2) As perpetuities, enterprise foundations are very long-term owners whose companies are not for sale. Is it possible to have efficient firms without a market for corporate control? Perhaps there are competitive advantages to long-term ownership under some circumstances? Again the answer that we give to this question is yes.

(3) Enterprise foundations often concentrate their investments in a single firm or a single business group. Can they compete efficiently without the risk diversification benefits of public listing? Here our answer is a bit more guarded “yes, maybe”. We observe that many of the best known foundation-owned companies are publicly listed while the foundation retains a controlling ownership position.

(4) Enterprise foundation boards tend to be self-appointed. Doesn’t this lack of checks and balances lead to passivity, self-dealing or other agency problems? If not, what are the mechanisms that keep it in check? Here we argue that passivity and self-dealing are a latent risk, which may be mitigated by regulation and foundation governance rules concerning nomination, independence, competencies and other structures.
1.1. Why Denmark?

(5) Enterprise Foundations generally have philanthropic as well as business purposes. How do these two goals coexist and interact? How does the philanthropy influence the operating companies?

The observation that many successful world-class companies are owned by enterprise foundations presents a paradox to conventional corporate governance models. Does the anecdotal evidence hold out in statistical testing? Do foundation-owned firms over- or underperform? If they perform well, does this mean that we have to rethink corporate governance and de-emphasize the profit motive aka shareholder value? Or perhaps their apparent success is attributable to other factors? In any case, it seems interesting to inquire how enterprise foundations are governed and whether governance makes a difference between more or less successful foundation ownership.

In this monograph, we review the emerging literature on enterprise foundations in an attempt to address these important questions. After this introduction (Section 1), we begin by defining an enterprise foundation and its essential characteristics (Section 2). We then discuss relevant theoretical perspectives on foundation ownership including agency theory, contract failure, and game theory (Section 3). Sections 4 and 5 examine enterprise foundation law and tax law respectively. Section 6 reviews the financial and social performance of foundation-owned companies. Section 7 addresses enterprise foundation governance. Section 8 concludes with a summary of findings and some ideas for future research.

1.1 Why Denmark?¹

Before proceeding, we briefly digress to address a frequently asked question. Why are there so relatively many enterprise foundations in Denmark and more generally in Northern Europe? Thomsen (2016a) tries to throw some light on this question.

One explanation is taxation. The Nordic countries are welfare states with high levels of taxation including high wealth taxes in international comparison (Thomsen, 1999). This creates a greater financial incentive

¹We are grateful to an anonymous reviewer for raising this question head on.
to donate wealth to foundations which would (at least historically) avoid wealth taxes while retaining control of a business company. Secondly, the Nordic countries score very high on the World Bank’s governance indicators including the rule of law and corruption control (Thomsen, 2016a,b). This means that foundation ownership in the Nordic countries may be less susceptible to expropriation of private benefits than elsewhere. Foundations in particular have to rely on the rule of law since they lack outside owners who can protect their property rights. Thirdly, as we will explain in Sections 4 and 5, Denmark in particular adopted a liberal enterprise foundation law, which allows foundations to own companies with very few exceptions, while other countries – including the US – opted to prohibit or restrain them from doing so.

Nordic culture may be another explanation. For example the Nordics routinely rank high on international comparisons of social trust (Brandl, 2020; Holmberg and Rothstein, 2017; Svendsen and Svendsen, 2016). It is conceivable that a high level of trust and trustworthiness facilitate the formation and governance of enterprise foundations with more limited self-dealing and private benefitting than in other countries. However, it is noteworthy that the frequency of enterprise foundation varies in the Nordic countries between Finland (low), Norway (medium), Sweden (high), and Denmark (very high). So there are other important determinants.

Schröder (2021) documents that enterprise foundations are found around the world in countries as different as India, Brazil, Taiwan, and US. In some countries they constitute a sizeable share of the domestic stock market – e.g., in Denmark (40%), Austria (30%), Sweden (20%), the Netherlands (15%), Norway (10%), India (5%), and Switzerland (5%). Typically, there are very few of them outside Europe (the Indian Tata trusts being an outlier), which is no doubt attributable to the large loss of personal wealth which founders must incur when they donate their shares in a company to an enterprise foundation (see Section 5). Thus, enterprise foundations are found around the world albeit most often in small numbers. That is, although they are particularly abundant in Denmark and the Nordics, they are not just a Danish or Nordic story.
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