

The Charters of Industrial Foundations¹²³

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Abstract

We examine the charters of 118 Danish Industrial Foundations in 2010 and 2014. The charters regulate objectives, governance, capital structure and many other important aspects of foundation activity. We find considerable variation between foundations which differ substantially in the charter provisions that they apply. Charters are quite stable over the 4-year period 2010-2014 with correlation coefficients exceeding 0.9, but to our surprise we also find significant changes. More foundations adopt charter provisions emphasizing generally charitable goals, risk aversion, the possibility to divest the company and a self-elected board. In contrast they eliminate prohibitions on divesting companies owned by the foundations. The charters are loosely related to economic fundamentals (foundation size, capital structure and profitability). A single 2010 charter provision (same goal in that the company and the foundation) appears to influence subsequent performance of the controlled company.

1. Introduction

Industrial foundations are foundations that own business firms (Thomsen 2012), which implies an interesting combination of for-profit business firms with non-profit ownership. These entities are found around the world, but they are quite common in Denmark, where foundation-owned firms constitute up to 70% of stock market capitalization and some 5% of the labour force.

Danish industrial foundations are governed by a foundation board operating under a charter decided by the founder of the foundation, often an entrepreneur who donates his stock in the company to the foundation. The charter is the constitution of the foundation. They contain provisions concerning objectives, governance, capital structure and other important issues. Once a foundation is approved and registered, both the board and the regulator are legally obligated to ensure that it is respected and that the foundation abides by the law on industrial foundations as well as other relevant law.

The charters thus constitute a rich and highly relevant source for understanding industrial foundations, but there has been no systematic research on the topic. In this paper, we present the first academic study. We examine charter provision in 118 industrial foundations in 2010 and 2014.

The structure of our paper is as follows. We discuss the institutional background in section 2. In Section 3, we provide examples from some of the largest foundations. In section 4 we present our data and results, which we examine further through statistical analysis in section 5. Section 6 concludes.

2. Charters in Danish Foundation law

According to Danish industrial foundation law⁶ (EFL § 27) all industrial foundations must have a charter (a set of bylaws), which must a minimum must stipulate

- 1) the name of the foundation,
- 2) its founder,
- 3) its purpose,
- 4) its capital and how it is paid in,
- 5) whether the foundation has received other assets than cash,
- 6) special rights attributable to founders or other beneficiaries,
- 7) the number of board members and how they are appointed,
- 8) accounting period (year) and first accounting year,
- 9) data of legal enactment if different from the date of establishment,
- 10) use of earning and reserves.

The special rights for founders and the founding family alluded to will only be legally binding for currently living persons and their offspring, board positions excepted (EFL § 28).

Charters may be changed (§ 89) on the board's suggestion, if the foundation authority approves. However, changes to the purpose require special permission from The Department of Civil Affairs at the Ministry of Justice. The foundation authority may also intervene to change a charter provision if it is impossible to carry out or clearly inappropriate (§ 90).

The foundation regulator (a relevant government authority, currently the Danish Business Authority, formerly either the Danish Business Authority or the Danish Civil Agency) exercises "legality supervision" of the industrial foundations, i.e. monitors whether the charter and relevant laws are upheld.

There is considerable discretion with regard to foundation purpose as long the purpose does not conflict with prevailing law and "ordinary decency". Thus the purpose may be to run a company or to benefit a company, but often the charter will outline a charitable purpose, while stock ownership in a particular company is treated not as a purpose, but as an additional provision in the charter.

⁶ In the following we describe the new foundation law expected to be in effect from 1 January 2015. However, the charters that we subsequently analyze were subject to the previous law.

Legal structure. Despite the considerable latitude which founders have in setting up Danish industrial foundations, the law does impose some structure. A foundation must have governing board of at least 3 members (EFL § 37). The foundation board must to some extent be independent of the founder (at least 1 board member independent of the founder, more in larger foundation boards) (§ 1.1). Founders and founding family cannot constitute a majority of the board members without the regulator's acceptance (§ 40). The foundation board may hire one or more executives (§ 37.2), who are normally present at board meetings (§ 42), but a majority of the board members cannot be executives in the same foundation (§ 37.3). Neither can the chair or vice chair of the foundation board be executives in a company owned or controlled by the foundation. Nor are executives the companies owned or controlled by the foundation allowed to appoint members of the foundation board (§ 37.4)⁷. Finally, an industrial foundation must be endowed with a minimum capital of 300.000 DKK (approximately 50.000\$).

In addition to these hard law requirements industrial foundations are now (from 2015) obligated relate to a series of best practice recommendations on a comply-or-explain basis. This practice is relatively new and not valid for the charters we have examined in this paper, but we nevertheless mention a few of the recommendations here as an indication of what is (and was) considered best practice.

It is recommended that majority of board are not at the same time officers or directed of companies which the foundation owns or controls (2.3.5) except for 100% owned holding company. In addition, at least 1/3 of the foundation board members should be "independent", so that they are not current or former officers or directors of controlled companies, have a tenure as board members of more than 12 years, belong to the founding family (if the foundation donates to members of the founding family), have received major donations from the foundation and so on.

Foundation boards are recommended (2.5.2) to propose age limits for board members, which may however be waived for members of the founding family. Foundation board and foundation management are to be compensated by fixed pay (3.1.1.) and thus do not receive

⁷ This clause is subject to a grandfather rule so that members of the foundation board can be appointed by officers and directors of a controlled company if this state in the foundation charter prior to a change of the law in 1.1.2015.

bonuses or other performance-related pay. Moreover, the total pay received by both board member and managers should be disclosed at the individual level (3.1.2) including compensation from management or board positions in owned or controlled companies.

3. Examples

In this section we review the charters of the 3 largest Danish industrial foundations to illustrate commonalities and differences.

The A.P. Møller foundation⁸ owns the shipping company A. P. Møller – Mærsk. It states 6 main purposes a) supporting the Danish cause in South Jutland, b) to promote closest possible cooperation between Denmark and other Nordic countries, c) to promote Danish seafaring, d) to promote Danish seafaring and industry, e) to promote science, especially medical science, f) to contribute to general charity. The foundation is endowed with stock in the shipping company A. P. Møller Maersk and is obliged to use dividend income to acquire more voting stock from a related family foundation.

The foundation is obliged to use its voting rights to ensure that the management of the company is conducted in the founder's "*spirit*" so that it is "*well consolidated*" and so that the objective is not primarily large dividends but the "*useful business activity*".

With regard to governance, the founding family must always be represented on the board, if possible a family member should chair the board. The board has discretion to change the charter and if necessary to dissolve the foundation. Stock in the companies administered by the founder could not be divested, but whether this obligates the foundation to hold stock is not clear. The foundation's basic capital cannot be reduced and should be replenished by current profits in case of losses.

The Novo-Nordisk Foundation owns the pharmaceutical company Novo Nordisk and the enzyme producer Novozymes, which was spun off from Novo Nordisk in 2000. It states 4 main purposes: 1) to constitute a stable foundation for business and research activity in Novo Nordisk, Novozymes and other companies that the foundation may own or influence, 2) to

⁸ A. P. Møller og Hustru Chastine Mc-Kinney Møllers Fond til Almene Formål

support medical research in general, 3) to contribute to the maintenance of Novo Nordisk's research hospitals, 4) to support other scientific, humanitarian or social purposes.

The foundation is obliged to maintain its voting majority in Novo Nordisk and Novozymes and to ensure that the companies contribute to the Novo Group and act in accordance with its vision and values. The foundation is also obliged to ensure a reasonable consolidation (build equity) which will allow it to participate in future stock issues by the companies.

The Carlsberg Foundation owns the Carlsberg Breweries. It states 4 main purposes: a) to contribute to and manage the Carlsberg Laboratory, b) to promote the sciences, c) to maintain and develop the national Historical Museum, d) to donate to socially beneficial purposes through the Tuborg foundation, particularly support for the Danish business community. The foundation is obligated to own 51% of the share capital of Carlsberg. It may reduce its ownership share if this is required for the benefit of the company, but must remain a significant shareholder. The foundation board consists of 5 members elected by the Danish Academy of Sciences.

The charter commits the foundation to exercise its influence on Carlsberg and to ensure that the founder's "golden words" are upheld: *"In working the Carlsberg Breweries it should be a constant purpose, regardless of immediate profit, to develop the art of making beer to the greatest possible degree of perfection in order that these breweries as well as their products may ever stand out as a model and so, through their example, assist in keeping beer brewing on a high and honourable level."*

It is evident from this review that the above charters differ in some respects. For example, the Novo Foundation mentions the welfare of the companies as an explicit objective, while the other two do not. The A. P. Møller foundations emphasize a continuing role for the founding family, while the other two do not.

However, the charters are also similar in important respects. All 3 mention limitations on divestiture of shares in the focal companies. All 3 emphasize values over short run profits as guidelines for business activity. All 3 emphasize stability.

Below we analyze variations in charters to examine more systematically how charter provisions correlate with company characteristics.

4. Data

We follow Hansmann and Thomsen (2013) in categorizing charter provisions by their expected effect on “managerial distance” between the foundation and the company that it owns. Separating the boards, for example, so that they do not consist of the same members, would tend to increase distance as would allowing the foundation to sell the company. In contrast having the same address or stating that the foundation and the company are to be considered as one entity would tend to reduce managerial distance. In table 1 below we provide an overview.

Business goal -

This variable states whether the industrial foundation has a business goal or not. The coding will be “yes” (1 and zero otherwise) if the foundation explicitly writes in their charter that securing the company is one of its goals. This condition appears in many of the charters (specifically 64 %). For example the Agner Kristian Flensborg’s foundation writes: *“The goal of the foundation is to ensure and maintaining the majority of shares in A. Flensborg A/S, and maintaining and strengthen the company’s continued existence and development”*. As a result of this condition the variable will be coded ”yes” (1, 0 otherwise) for the Agner Kristian Flensborg’s foundation. Examples that are a lot like the one from the Agner Kristian Flensborg’s foundation’s charter are found in many of the other charters. The Aller foundation’s charter says that: *“(… the goal is to) own, maintain and vote on the shares in Carl Aller’s Etablissement A/S assigned to the foundation”*. The Cowi foundation’s charter states that: *“The foundation has to support and expand Cowi Holding A/S”*. The CO-RO’s foundation’s charter states that *“The goal of the foundation is to lead, strengthen and maintain the existing and to be companies of the CO-RO group”*. Another example is the Novo Nordisk foundation whose charter says that: *“(… the goal is to) pose a stabile foundation to the industrial and researching company that is operated by Novo Nordisk A/S”*. These examples are very alike. The variable can also be coded ”yes” (1, 0 otherwise) if the charter has expressed the business goal differently. The A. P. Møller foundation’s charter states that the board of the foundation has to exercise the right of voting for the companies owned by the foundation. Furthermore it states that the foundation’s resources preferably must be placed in shares in A. P. Møller A/S. Combining these two statements the conclusion is that the foundation has a business goal.

Table 1. Classification of Charter Provisions

| Provision | Measurement | Predicted effect on managerial distance |
|--|---|---|
| Business goal | Is running the company (part of) the foundation's purpose | - |
| Business support | Can the foundation donate support the company financially | - |
| Donations to employees | Can the foundation donate to employees of the company? | - |
| Family donations | Can the foundation donate to descendants of the founder | + |
| No family donations | Are donations to the founding family prohibited | - |
| Business and foundation goal to be regarded as one | Are the two entities to be considered as one? | - |
| General charity | Does the foundation has a charitable intention? | + |
| Yield goal | Should the company be run for profit? | + |
| Risk aversion | Should the foundation or company try to avoid excessive risk? | - |
| Foundation secretariat | Can the foundation have a secretariat? | + |
| Foundation CEO | Can the foundation have a CEO? | |
| Same address | Do foundation and company have the same address? | - |
| Possible divestiture | It it possible for the foundation to divest the company? | + |
| Possible divestiture in a crisis | Is it possible to sell the company in a crisis situation | + |
| Prohibited divestiture | Is divestment of the company prohibited | - |
| Other firms | Can the foundation own other firms? | + |
| Mandatory accumulation | Is it mandatory for the foundation or company to consolidate its accounts by retained earnings? | + |
| Self-electing board | Is the board self-elected? | - |
| Mandatory board overlap | Is there mandatory overlap between company and foundation board? | - |
| Mandatory board separation | Is there mandatory separation of the two boards | + |
| Family members on the board | Are founding family members to sit on the foundation board | + |
| Age limit | Is there an age limit | + |
| External appointment of board members | Are board members appointed by outsiders? | + |
| Mandatory independent board member | Do some members of the foundation board have to be independent? | + |

Business donation

This variable indicates if it is possible for the foundation to support the company. This can for example be lending money to the company, buying shares etc. Altogether 42 % of the foundations have this condition stated in their charter. For example the Novo Nordisk foundation's charter, whose charter stated that they should provide a stable foundation for their company, does not prescribe business donations. The same applies to for example the A. P. Møller foundation. Even so, a lot of the foundation's charters prescribe business donations. The Cowi foundation's charter states that: "*The foundation can use its resources to expand its shareholding in Cowi holding A/S and provide grants and loans to the company*". The foundation for employees in Niels Clauson-Kaas A/S's charter states that the foundation's resources can be used as loans to Niels Clauson-Kaas A/S. Expressions like this is used in many of the charters. It is worth mentioning the support must often be provided with some insurance. For example the Grethe and Jørgen P. Bornerup's foundation states that when a loan is provided, the foundation's resources must be secured in a responsible manner.

Donations to company employees

The variable indicates if it is possible for the foundation to support the employees of the company. If the charter explicitly mentions that the foundation can support employees, then the variable will be coded "yes" (1, 0 otherwise) , and this is the case with 41 % of the foundations. Typically it is expressed in the following manner (an example from Bitten and Mads Clausen's foundation): "(... the goal is to) *support current and former employees at Danfoss A/S or companies related to Danfoss A/S*". The way this variable is expressed does not differ remarkably from charter to charter.

Family donations

This variable states whether the foundation is allowed to support the founding family. If it is explicitly mentioned in the charter that one of the foundation's goals is to support the founding family, then the variable will be coded "yes" (1, 0 otherwise). As with the variable regarding donations to company employees the way this variable is expressed in the charters does not differ much from charter to charter. 38 % of the foundations are allowed to make family donations, and the way this is often expressed can be seen in the following examples. In the charter for Bent O. Jørgensen's foundation it is written that: "(... the goal is to) *support and secure descendants of Bent O. Jørgensen and descendant of his wife, Anne*

Lise Schjeldal'. In the charter for Claus Sørensen's foundation it is stated that $\frac{3}{4}$ of the foundation's resources available to distribution should be used to support the founding family. In the charter for the Lundbeck foundation it is stated the foundation can give scholarships or support the descendants. As the examples show, it is not difficult to determine whether the foundation is allowed to make family donations or not.

No family donations

The variable indicates if the charter explicitly prohibits the foundation from supporting the founding family. Only 2 % of the foundations have this condition stated in their charter. This implies, since only 38 % were allowed to make family donation, that many of the foundations do not have explicit guidelines regarding whether or not they are allowed to make family donations. The only two foundations that are explicitly prohibited in making family donations are Civilingeniør Bent Bøgh's foundation and Per and Lise Aarsleff's foundation. In the charter for Civilingeniør Bent Bøgh's foundation it is stated that support cannot be granted to descendants of Bent Bøgh and Inge Bøgh. In the charter for Per and Lise Aarsleff's foundation it is stated that the foundation's resources cannot be granted to the descendants of the founder. In no other of the charters is it explicitly mentioned that the foundation cannot provide family donations.

Business and foundation goal to be regarded as one

This variable will be coded "yes" (1, 0 otherwise) if the charter states that the foundation and the company have the same goal. Only 8 % of the foundations have this condition in their charter. For example the Schou foundation has this condition in its charter; the goal for the foundation is mainly the same as for the company.

General charity

This variable states whether the foundation has a charitable goal or not. This is one of the most common conditions in all of the charters, and is typically stated at the very beginning of the charter. For example the charter for the Novo Nordisk foundation writes: "(... the goal is to) support other scientific and humanitarian and social goals". The Carlsberg foundation's charter writes: "(... the goal is to) provide grants to socially beneficial goals through the Tuborg foundation". Another example is from the A. P. Møller foundation in whose charter it is stated that: "(the goal is to...) make contributions with charitable purposes". This last

expression is frequently used, and appears repeatedly throughout all of the charters that have stated this condition.

Profit goal

This variable states if the foundation must have a yield or profit goal. Some examples are given below in order to understand when this variable is coded "yes" (1, 0 otherwise). The Novo Nordisk foundation's charter states that: "(...) and ensure that the foundation gets a satisfying economic return". A lot like the Novo Nordisk foundation the Axel Muusfeldt's foundation's charter states that the foundation should achieve the highest possible return. This is mainly the way this variable is expressed throughout the charters, and 14 % of the foundations have this condition in their charters.

Risk aversion

This variable states if the charter explicitly indicates, how the foundation should act when it comes to risk. If anything regarding risk aversion is mentioned in the charter, the variable is coded "yes" (1, 0 otherwise). Many of the charters have some information about the foundation's risk aversion. Specifically 52 % of the foundations have some provision about risk. Generally phrases as "adequate security" and "responsible investment policy" are used, which implies that most of the foundations must not act recklessly when deciding where to spend their resources. In some cases the variable has not been coded "yes" (1, 0 otherwise) as the charter does not imply that the foundation must be outright risk adverse, but just that the foundation should act responsibly.

Foundation secretariat

This variable indicates whether the foundation can have its own secretariat. This is possible for 38 % of the foundations, and it is mainly expressed with the following phrases. The foundation of December 29th's charter says: "The board can assume a management to perform the daily management of the foundation". The Novo Nordisk foundation's charter states that: "The board can (i) hire a manager and/ or (ii) create a secretariat". This is usually the phrases used when the charters describe whether the foundation can have a secretariat or not, and therefore it is not hard to determine whether the variable should be coded "yes" or not.

Foundation CEO

This variable indicates if the foundation can have a CEO. The variable is often coded the same as the one regarding the foundation secretariat, because, as with the Novo Nordisk

foundation, it is usually allowed for the board to hire a manager *and/ or* create a secretariat. 37 % of the foundations are allowed to hire a CEO.

Same address

This variable states if the foundation and the company must have the same address. This is only to be found in one of the foundation charters, which is the Otto Mønsted's foundation. In this charter it is explicitly stated that the foundation must be located in Copenhagen which also counts for the company.

Possible divestiture

This variable indicates if the foundation is allowed to sell the company. 46 % of the foundations have this opportunity. The way the charters express whether it is allowed or not differs a little bit across the charters. The charter for the Alectia foundation for example says that: "By any divestiture of the shares in Alectia A/S the foundation shall ...". This sentence hereby says that it is possible for the foundation to divest the shares in the company. In some other of the charters it is more explicit whether the foundation may sell the company. In the charter for Hagbard and Else Andersen's family foundation it is stated that the board is always allowed to sell its assets if it find this appropriate. This is the more common way of stating it in the charters.

Possible divestiture in a crisis

This variable differs a little bit from the one regarding possible divestiture, and indicates whether the foundation is allowed to sell the company in a crisis. 11 % of the foundations are allowed to do so, and below there are given some examples to show when this variable is coded "yes" (1, 0 otherwise). The charter for Grosserer Robert Delfer's memorial foundation says that the foundation's shares in Synoptik Holding A/S must not be divested unless a divestiture is necessary in order to fulfill the foundation's goals. Another expression which is coded "yes" (1, 0 otherwise) is the Stibo foundation's wording; if the maintenance of Stibo Holding A/S' activities makes it necessary to divest some of the company or some other shares, then the board can decide towards that.

Prohibited divestiture

This variable indicates if the charter says that divestiture is prohibited. This is the case with 11 % of the foundations. The variable is given a "yes" (1, 0 otherwise) if it is explicitly stated

in the charter that the foundation cannot divest the company. For example the charter for the Leo foundation states that: “The foundation’s shares in Leo Pharma A/S must not be sold, pledged, mortgaged (...)”. This makes it clear that the foundation is not allowed to divest any of its shares in Leo Pharma A/S. The above mentioned example is the usual way of expressing that the foundation is not allowed to divest the company though sometimes the charter expresses the condition even more explicitly; For example in the charter for Kaj Hansen’s foundation it is stated that: “The company must never be divested to anybody”.

Other firms

This variable states whether the foundation can engage in other companies. 64 % of the foundations are allowed to do so. This variable gets a ”yes” (1, 0 otherwise) if, in the charter, it is mentioned that the foundation has shares in other companies.

Mandatory accumulation

This variable indicates if the foundation must accumulate some of its profits. 17 % of the foundations are obligated to do so. In deciding whether the variable should have a ”yes” (1, 0 otherwise) or not there has been a strict separation between the foundations. If the charter says that the foundation “can” accumulate some of the achieved profits then the variable is not coded ”yes”, but if the charter says that the foundation “must” accumulate some of the achieved profits then the variable gets a ”yes” (1, 0 otherwise).

Self-election

The variable “self-election” determines if the board members are elected by the existing board. 90 % of the foundations have this condition written in their charter. It is though worth mentioning that it may be only some of the board members that are self-elected, while other members of the board can be elected in another way.

Mandatory overlap

This variable indicates, if there must be an overlap between the foundation’s board and the company’s board. 27 % of the foundations have this condition written in their charter. The variable is coded ”yes” (1, 0 otherwise), if it is stated, as in the charter for the Agner Kristian Flensburg foundation, that one of the employees in A. Flensburg A/S must be on the board. Nonetheless the variable will not be coded ”yes” (1, 0 otherwise) if the charter just indicates that there must

be an employee representative in the board, because this is what the law prescribes. The charter has to state some further overlap than this in order to code the variable a “yes” (1, 0 otherwise).

Mandatory separation

This variable indicates if the board members in the foundation’s board must not be the same as in the company’s board. 11 % of the foundations have this condition written in their charter. In the charter for the EKJ foundation it is stated that one member of the board must be one who is not an employee in the EKJ A/S. Another example, which is stricter, is in the charter for the Egmont foundation, where it is stated that no one hired in a company related to the Egmont foundation can be on the board of the Egmont foundation.

Family members on board

This variable indicates whether members of the founding family can be on the board. In 41 % of the foundations it is required that a member of the founding family is on the board. But if nothing regarding family members on the board is mentioned, the variable is not coded “yes”.

Age limit

This variable indicates whether there is an age limit for being on the board or not. This is the case in 61 % of the foundations. The most common age limit is 70, but 65, 67, 72, 75 and 80 also appear as age limits in some of the charters.

External appointment

The variable “external appointment” indicates if one or more of the board member must be elected externally, and not by the existing board. 27 % of the foundations have this condition written in their charters. For example many of the charters state that “Advokatrådet” (The Danish Bar association) must appoint one of the board members. This is the case in for example Grethe and Jørgen P. Bornerups foundation, Hagbard and Else Andersen’s family foundation and Herning Folkeblads foundation.

Mandatory independent board member

The last variable concerns the issue of whether there must be a board member who is independent of the founding family. This is the case in 14 % of the foundations. The number of independent board members differs between the foundations, which have this condition written in their charter. For example in the Brødrene Hartmanns foundation at least half of the board members must be independent of the founding family, while the DLH foundation and in the Erik and Susanna Olesen's foundation it must only be one of the board members.

5. Results

Table 1 summarizes our main results. For each charter we code whether a certain provision is included and add up the figures in percent of total

Table 2. Charter Provisions in Danish Foundation Charters 2010 and 2014

| Charter Provision | % | | T-Test for Differences in means | Tetrachoric correlations (2010, 2014) | Pearson correlations (2010, 2014) |
|---------------------------------------|------------|------------|---------------------------------|---------------------------------------|-----------------------------------|
| | 2010 n=118 | 2014 n=118 | | | |
| Business goal | 66 | 64 | ns | 0.992*** | 0.904*** |
| Business support | 44 | 42 | ns | 0.984*** | 0.857*** |
| Donations to employees | 42 | 41 | ns | 0.981*** | 0.927*** |
| Family donations | 38 | 38 | ns | 0.998*** | 1.000*** |
| No family donations | 3 | 2 | ns | 0.738* | 0.701*** |
| Company and foundation have same goal | 6 | 8 | ns | 0.833*** | 0.825*** |
| General charity | 81 | 86 | 2.02** | 0.967*** | 0.907*** |
| Profit goal | 16 | 14 | ns | 0.986*** | 0.864*** |
| Risk aversion | 41 | 52 | 3.34*** | 0.966*** | 0.806*** |
| Foundation secretariat | 31 | 38 | 2.37** | 0.980*** | 0.852*** |
| Foundation CEO | 36 | 37 | ns | 0.968*** | 0.906*** |
| Same address | 2 | 1 | ns | 0.986** | 0.704*** |
| Possible divestiture | 34 | 46 | 3.45*** | 0.924*** | 0.778*** |
| Possible divestiture in a crisis | 12 | 11 | ns | 0.814*** | 0.686*** |
| Prohibited divestiture | 19 | 11 | -3.98*** | 0.923*** | 0.694*** |
| Ownership of other firms | 66 | 64 | ns | 0.975*** | 0.942*** |
| Mandatory accumulation | 21 | 17 | ns | 0.980*** | 0.836*** |
| Self-electing board | 81 | 90 | 3.47*** | 1.000*** | 0.687*** |
| Mandatory board overlap | 31 | 27 | ns | 0.945*** | 0.816*** |
| Mandatory board separation | 9 | 11 | ns | 0.975*** | 0.917*** |
| Family members on the board | 42 | 41 | ns | 0.996*** | 0.945*** |
| Age limit | 62 | 61 | ns | 0.934*** | 0.808*** |
| External appointment of board members | 27 | 27 | ns | 0.998*** | 0.949*** |
| Mandatory non-family board member | 13 | 14 | ns | 0.997*** | 0.930*** |

* significant at 10% level, ** significant at 5% level, *** significant at 1% level. Tetrachoric correlations are intended to provide a more precise measure of covariation among binary variable

First, we observe great variation in the use of individual charter provisions across firms. Correlation coefficients measure the covariance in charter provisions between foundations are typically low.

Some – like a general charitable purpose, a self-electing board, the option for the foundation to buy other firms or the age limit - are widely used by clear majority of the foundations. Others, like a prohibition against donations to the founding family or having the company and foundation addresses be identical, are very rarely used.

As expected, we observe quite high stability over time. The correlation between 2010 and 2014 are very high, typically higher than 0.9, and highly significant.

Secondly, there is change even over a 4 year period. Some provision like general charity, the foundation secretariat, possible divestiture, the need for risk prudence and a self-elected board are becoming more widely used, while the prohibited divestiture, mandatory accumulation or mandatory board overlap are becoming less common. Charters appear not to be written in stone, but quite malleable even over a relatively short period of time such as 4 years. In some cases, the changes are economically important and take place quite fast: 12% of the foundation changed to explicitly allow for divesture of the company during the period, while 8% fewer prohibit divestiture.

In general, industrial foundations tend to have two objectives: continuing ownership of a business company and charity. 2/3 of the foundations here have an explicit business goal – typically maintaining ownership of a particular company. This may even be an understatement of the importance of the business objective since some foundations do not voice it explicitly as a goal but nevertheless maintain that the company must continue to the company donated to it by the founder. In many cases (42%) the business goal implies that the foundation can support the company by loans and other mechanisms. Moreover, 41% of the foundations may donate to company employees. The overlap between company and foundation affairs sometimes extends to the point where the charter intends the two to be regarded as one entity (8%).

Fully 86% also have general charitable (philanthropic) goals. Numerically, donation to the founding family are much less important (38%) and a few foundations (2%) even explicitly rule out such donations. In general, both foundation law and foundation charters emphasize the need for prudent risk management and avoiding excessive risk, which can be regarded as an

expression of risk aversion (525 of foundations). However, some charters specifically mention that company should be run on a for profit basis with a yield goal (14%).

A little more than 1/3 (38%) of the foundation charters mention the possibility to have independent administrative unit (a secretariat) service the foundation and a similar number (37%) mention the possibility of employing a foundation CEO. This does not mean that 2/3 would be prevented from using these options, if they can afford it. Nor does it mean that foundations will necessarily use the option even it is mentioned. Actual numbers indicated that only 20% of all foundations employ a CEO (Hansmann and Thomsen 2013). But presumably the explicit option to do will make them more likely to do so. In most case, the alternative will be to have secretarial and managerial assistance from the company which will presumably lower the probability of decisions that are unpleasant for company management such as having the CEO fired. An alternative is to outsource to a professional administrator, most often a lawyer who may or may not at the same time sit on the foundation board.

Around half of the charters (46%) are open to the possibility that that the company can be sold. And an additional 11% allow that it can be sold in a crisis situation. Again, this does not mean the rest are prohibited from selling or that foundations that can sell the company actually do so.

2/3 of the charters indicate that the foundation may also own other companies than the one donated by the founder. Both charter provisions create managerial distance between the company and the foundation since the company is no longer indispensable.

The vast majority of charters let the board be self-elected so that the incumbent board members elect new board members. The alternative – to let some foundation board members be appointed a third party such at the Danish Bar Association, the Royal Danish Academy of Sciences or the founding family – is mandated in only ¼ (27%) of the charters that we analyse. 14 % require independent board membership.

A quarter of the charters (27%) have a mandatory overlap with the company board or company management so that the foundation board must partly consist of managers or directors (board members) in the company. In contrast 11% prohibit such overlaps. Presumably the idea of overlap is that foundation board must be informed about what is

going on in the company while a chain-of-command view would indicate that greater “managerial distance” is preferable so that company boards should not have to supervise themselves.

Almost half of the charters (42%) see a continuing role for members of the founding family as board members. This is broadly consistent with Hansmann and Thomsen (2013) who find that the founding family is active in roughly half of the foundations that they observe.

6. Statistical Testing

We begin by examining the determinants of charter provisions, particularly whether they are associated with the size, balance sheet and economic performance of the foundation and/or its controlled companies.

In table 3 we examine the impact of foundation characteristics on the provisions described above. We use t-tests to check for significant co-variation.

Having a business goal covaries significantly with foundation return on assets. On average, foundations that had a business goal obtained 5.1% ROA 2005-2010, which is more than double the 2.2% obtained by foundations with no explicit business goal. It is possible that the business goal in itself spurs the foundation to more attention to profitability but it is also possible (though less plausible) that foundations with strong businesses come to emphasize the business goal.

3 other provisions are related to (past) performance: mandatory accumulation of reserves, and age limit and (negatively) possible divestiture in a crisis. Foundations whose charter does not mention the possibility to divest the company in a crisis have average ROA of 4.7% against only 0.3% for the foundations that do not have this provision.

Some provisions appear to be more prevalent among large foundations. This applies to charter provisions which mention a general charitable aim, a foundation secretariat, a foundation CEO, prohibited divestiture of the company, ownership of other firms.

Others are more prevalent among small foundations. These include provisions prohibiting donations to the founding family, mandating that the foundation and the company have

the same address, demanding externally (rather than self selected) board members and requiring non family board members.

Only 3 provisions are related to foundation capital structure. Foundations whose charters mention a foundation secretariat have lower solvency (equity/assets) ratios. The same is true for foundations whose charter specifically allows them to own other firms than the focal firms with which they were endowed. In both of these cases there is a significant foundation size effect at work so that large foundations are more likely to warrant a foundation secretariat and the possibility of diversification in their charters while at the same timing being more likely to borrow. Foundation size (assets) and solvency (equity/assets) are significantly negatively correlated (Pearson correlation coefficient of -0.07, significant at the 5% level).

Likewise, foundations whose charters require a non-family board member are likely to have higher solvency rates, but this is presumably because these foundations tend to be much smaller.

Finally, many charter provisions do not appear to vary with the economic variables suggested above. This is the case for provisions related to business support, donations to employees, donations to descendants, same goal in the foundation and the company, profit goal, risk aversion, possible divestiture, possible divestiture in a crisis, a self-electing board, mandatory board overlaps and mandatory board separation.

Table 3. Charter Provisions and Foundation Characteristics 2010

| Charter Provision | Foundation assets Bill DKKK 2010 | | Foundation Equity (% of assets) 2010 | | Foundation Return on Assets % 2005-2010 | |
|---------------------------------------|----------------------------------|---------|--------------------------------------|---------|---|---------|
| | No (0) | Yes (1) | No (0) | Yes (1) | No (0) | Yes (1) |
| Business goal | 2.5 | 6.3 | 75 | 82 | 2.2 | 5.1* |
| Business support | 3.1 | 6.2 | 81 | 78 | 4.1 | 4.2 |
| Donations to employees | 6.4 | 3.1 | 78 | 82 | 4.1 | 4.2 |
| Family donations | 6.0 | 3.4 | 78 | 82 | 3.8 | 4.9 |
| No family donations | 5.2 | 0.3*** | 80 | 77 | 4.1 | 4.4 |
| Same goal | 3.5 | 28.3 | 80 | 76 | 4.1 | 5.5 |
| General charity | 0.9 | 5.8*** | 79 | 80 | 3.4 | 4.3 |
| Profit goal | 3.0 | 15.0 | 81 | 74 | 3.7 | 6.3 |
| Risk aversion | 5.5 | 4.3 | 80 | 79 | 3.8 | 4.7 |
| Foundation secretariat | 2.5 | 9.8** | 85 | 70*** | 4.2 | 4.0 |
| Foundation CEO | 2.0 | 9.9** | 81 | 78 | 4.2 | 4.1 |
| Same address | 5.1 | 0.1*** | 79 | 86 | 4.2 | 2.8 |
| Possible divestiture | 5.3 | 4.4 | 79 | 81 | 3.8 | 4.7 |
| Possible divestiture in a crisis | 5.2 | 3.6 | 80 | 76 | 4.7 | 0.3* |
| Prohibited divestiture | 2.1 | 15.9** | 79 | 81 | 3.6 | 6.2 |
| Ownership of other firms | 1.8 | 6.6** | 86 | 76** | 4.4 | 4.0 |
| Mandatory accumulation | 5.3 | 3.8 | 78 | 84 | 3.3 | 7.1* |
| Self-electing board | 5.9 | 4.8 | 79 | 80 | 1.8 | 4.6 |
| Mandatory board overlap | 3.5 | 8.0 | 78 | 83 | 4.1 | 4.3 |
| Mandatory board separation | 4.7 | 7.9 | 81 | 69 | 4.1 | 4.6 |
| Family members on the board | 5.2 | 4.7 | 79 | 79 | 4.3 | 3.3 |
| Age limit | 3.5 | 5.9 | 81 | 79 | 2.5 | 5.1** |
| External appointment of board members | 6.2 | 1.6** | 79 | 82 | 4.3 | 3.0 |
| Mandatory non-family board member | 5.7 | 0.4*** | 79 | 89* | 4.0 | 4.8 |

* significant at 10% level, ** significant at 5% level, *** significant at 1% level

Foundation charters and company characteristics

Below, in table 4, we check to what extent charter provisions co-vary with economic characteristics of the foundation-owned companies.

Some provisions are mostly important if the controlled companies are small. These include prohibitions against family donations, mandating the same address for company and foundation plus mandatory non-family board members.

The controlled companies tend to be better consolidated if the foundation has a business goal or is authorized to donate to the employees. In contrast the company tends to be less well consolidated if the foundation charter allows for a foundation secretariat and (particularly) if it is explicitly possible for the foundation to sell the company in a crisis situation. It may be that foundations are more likely to tolerate high leverage in the company if they can sell it during a crisis. It may also be that higher leverage and higher implied risk of financial distress induces foundations to apply for permission to be able to sell the company if the situation should require as much.

A business goal in the foundation is associated with better past performance (3.5% ROA against 0.005%) in the company and so is the “prohibited divestiture” provision. Well-performing companies are presumably less likely to ask for charter changes to admit divestiture, but it is also conceivable (though less plausible) that a divestiture prohibition allows for better long term decision making in the company.

Table 4. Charter Provisions and Characteristics of the Controlled Firm 2010

| Charter Provision | Company assets Bill DKKK | | Company Equity (% of assets) | | Company Return on Assets % | |
|---------------------------------------|-----------------------------|---------|---------------------------------|---------|-------------------------------|---------|
| | No (0) | YES (1) | No (0) | Yes (1) | No (0) | Yes (1) |
| Business goal | 2.0 | 10.4 | 47 | 54* | 0.0 | 3.5*** |
| Business support | 2.8 | 13.5 | 52 | 51 | 2.2 | 2.5 |
| Donations to employees | 11.5 | 2.2 | 49 | 56* | 2.2 | 2.5 |
| Family donations | 10.4 | 2.9 | 50 | 55 | 2.4 | 2.2 |
| No family donations | 7.8 | 1.2* | 52 | 57 | 2.3 | 3.6 |
| Same goal | 7.3 | 11.8 | 52 | 55 | 2.1 | 6.2 |
| General charity | 0.8 | 9.1* | 53 | 52 | 1.3 | 2.6 |
| Profit goal | 4.0 | 25.4 | 53 | 47 | 2.3 | 2.6 |
| Risk aversion | 5.4 | 11.0 | 54 | 48 | 2.0 | 2.8 |
| Foundation secretariat | 6.6 | 9.6 | 55 | 47* | 1.8 | 3.4 |
| Foundation CEO | 4.0 | 13.4 | 52 | 52 | 1.9 | 3.1 |
| Same address | 7.7 | 0.3** | 52 | 61 | 2.4 | 1.6** |
| Possible divestiture | 9.7 | 3.7 | 51 | 53 | 2.4 | 2.3 |
| Possible divestiture in a crisis | 8.1 | 3.6 | 54 | 37*** | 2.4 | 1.7 |
| Prohibited divestiture | 1.8 | 19.2 | 51 | 54 | 1.5 | 5.3*** |
| Ownership of other firms | 5.7 | 8.5 | 51 | 52 | 1.6 | 2.8 |
| Mandatory accumulation | 8.6 | 3.8 | 52 | 52 | 2.1 | 3.1 |
| Self-electing board | 24.3 | 3.6 | 56 | 51 | 1.1 | 2.6 |
| Mandatory board overlap | 8.7 | 5.2 | 52 | 53 | 1.7 | 3.7 |
| Mandatory board separation | 7.8 | 5.2 | 53 | 46 | 2.2 | 3.3 |
| Family members on the board | 4.9 | 11.3 | 51 | 51 | 2.1 | 2.3 |
| Age limit | 10.4 | 6.0 | 53 | 51 | 1.9 | 2.6 |
| External appointment of board members | 8.1 | 6.0 | 50 | 57 | 3.2 | 0.05** |
| Mandatory non-family board member | 8.3 | 1.7* | 52 | 53 | 2.6 | 0.5 |

* significant at 10% level, ** significant at 5% level, *** significant at 1% level

Charter change

We now turn to the issue of charter change.

In table 2 above we noted significant changes in 6 charter provisions: general charity (+), foundation secretariat (+), possible divestiture (+), risk aversion (+), a self-elected board (+), prohibited divestiture (-), mandatory accumulation (-) and mandatory board overlap (-).

We analyzed these charter changes to examine to what extent they were influenced by economic fundamentals in the foundation and the company. In general, charter changes were not much influenced economic fundamentals, but we reproduce some of the findings of determinants of charter change in table 5.

We find that large foundations are more likely to abolish the “no divestiture” clause.

Secondly, increasing emphasis of risk aversion is found to be positively related to change in foundation solvency and change in ROA. Presumably foundations emphasized the need to mitigate risk both in the charter and in practice by consolidating their balance sheets and increasing earnings. Alternatively increasing ROA and solvency may reflect the increased emphasis on these issues in the charter,

Third, the odds of a change to specifically allow divestiture in the foundation charter were found to be lowered by higher ROA and by increases in ROA (in fact this is the only acceptable statistical model in table 6 according to the Chisquare test). Presumably foundations are more apply to change their charters to allow divestiture if ROA is low and falling. Such foundations may want to act in time to avoid financial distress or they may be acting under financial distress. Alternatively foundations may decide that they are no longer the best owner of the company in question (since they are unable to produce good results) and act proactively to change the situation by paving the way for possible divestiture. The fact that the foundation is now allowed to sell the company does not necessarily mean that it will actually do so. The charter change may nevertheless be advantageous for the foundation because it adds new option and bargaining power to its dealings with the company and its stakeholders.

Changes in board provisions emphasizing the possibility to have a secretariat and the (unrelated) provision for the board to be self-elected appear not to be influenced by economic fundamentals.

Table 5. Foundation determinants of charter change (logistic regression, odds, standard deviation in brackets)

| | Change in charter Provision Related to | | | | |
|---|--|-------------------|--------------------------|--------------------|--------------------|
| | No Divestiture (-) | Risk Aversion (+) | Possible Divestiture (+) | Secretariat (+) | Selfselection (+) |
| Foundation Assets 2010 | 1.062* (0.035) | 1.006 (0.047) | 0.759 (0.332) | 1.034 (0.055) | 0.819 (0.256) |
| Foundation Equity % 2010 | 3.64 (5.889) | 0.443 (0.693) | 0.827 (1.382) | 53.24 (193.4) | 1.091 (1.887) |
| Foundation ROA 2010 | 0.0003* (0.001) | 0.088 (0.437) | 0.00005* (0.0003) | 0.132 (0.961) | 0.0001 (0.0007) |
| Change in Foundation assets 2010-2013 | 0.999 (0.000) | 0.999 (0.000) | 1.000 (0.000) | 1.000 (0.000) | 0.999 (0,000) |
| Change in Foundation equity % 2010-2013 | 0.551 (0.219) | 188.2* (590.3) | 0.113 (0.406) | 1639.9 (9675.1) | 0.115 (0.419) |
| Change in Foundation ROA 2010-2013 | 5.145 (13.3) | 119.6* (346.8) | 0.0002** (0.0008) | 163.3 (572.7) | 0.002* (0.007) |
| Constant | 0.03 (0.0484) | 0.174 (0.219) | 0.186 (0.262) | 0.001** (0.003) | 0.142 (0.209) |
| Chisquare test Significance level | 0.245 | 0.333 | 0.048** | 0.473 | 0.133 |
| Pseudo Rsquare | 0.114 | 0.099 | 0.195 | 0.122 | 0.162 |

* significant at 10% level, ** significant at 5% level, *** significant at 1% level

Charter provisions and future performance

Last we examine to what extent charter provisions predict the future performance of the company. First we examine what 2010 provisions were correlated with subsequent performance (company ROA) over the 2010-2010 period. We selected the highest correlated provisions for further analysis, top of which was “same goal in company and foundation”. Below we estimate the impact of this provision on subsequent ROA 2010-2013 controlling for other factors including firm size (log company assets), firm solvency (company equity/assets, coea) and past performance (Lwcoroa company ROA 2005-2009).

As may be seen from table 6 the “Samegoal” variable remains significant at the 5% (and close to the 1% level). The result is robust to control for charter changes (i.e. the estimated ROA effect remains significant at the same magnitude). The estimated coefficient is 7 percentage points indicating that companies whose controlling foundation had this charter provision achieved 7 percentage points higher ROA 2010-2014. This is substantial since average ROA for the foundation-owned companies was 2.2% of the same period, and in fact it is likely to be an overestimate of the actual effect.

Table 6. Estimated Impact of “Same Goal in Foundation and Company” (2010) on Subsequent Performance (Roa 2010-2013) by OLS Regression

| Explanatory variables | Dependent Variable: ROA 2010-2013 |
|------------------------------------|-----------------------------------|
| Same Goal in Foundation ad Company | 0.069** (2.55) |
| Logcoassets (Log company assets) | 0.004 (1.07) |
| Coea (Company Equity % of assets) | 0.051 (1.61) |
| Lwcoroa (ROA 2006-2010) | 0.334** (2.73) |
| Constant | -0.067* (-1.29) |
| N (no of observations) | 92 |
| R ² | 0.2483 |
| F-value | 7.18*** |

A strong positive effect of having the same goal in the company and the foundation seems to challenge some key assumptions in corporate governance, particularly the idea of managerial distance, which stresses that profit pressure from outside may be productive in pushing the company and its management to more efficient, value creating activities. So it may be tempting to regard the above result as an artifact generated by a few foundations that just happen to have this provision in their charters.

On the other hand the same provision highlights one of the special characteristics of industrial foundations: that the most important goal of the foundation is often to run a successful business and that foundation-owned company may therefore take a different view of its activities, particularly a long term perspective on profits and social responsibility.

Other 2010 charter provision positively correlated with subsequent company ROA were “Business goal”, “Profit goal”, “No divestiture” and “General Charitable goal”, but the impact of these provisions was not strong enough to survive the statistical control variables.

7. Discussion

We find that foundation charters differ considerably but that they are relatively constant over time. Nevertheless we also observe significant changes even over a 4 year period. The charters and changes to them appear to be loosely related to economic fundamentals.

It is striking that 12% of 118 foundations were able to change their charters to allow for divestiture of the company from 2010 to 2014. Apparently the foundation authority has adopted a flexible approach which accommodates requests by the foundations even on an issue as important as this.

During the period 2010-2014 Danish industrial foundations have been regulated by two different institutions: The Danish Civil Agency (Civilstyrelsen) under the Ministry of Law and the Danish Business Authority (Erhvervsstyrelsen) under the Ministry of Business and Growth. Below (in Table 7) we analyze whether the rate of charter changed has differed between the two institutions to check the impact of differences in regulation enforcement.

Table 7. Charter changes (%) by Foundation Authority

| Change in charter Provision Related to | | | | | |
|---|----------------|----------------------|---------------|-------------|---------------|
| Foundation Authority | No Divestiture | Possible Divestiture | Risk Aversion | Secretariat | Selfselection |
| Danish Civil Agency | -8.3% | 8.3% | 11.1% | 8.3% | 8.3% |
| Danish Business Authority | -8.6% | 13.5% | 9.8% | 4.9% | 9.9% |
| Total | -8.5% | 11.9% | 10.2% | 6.0% | 9.4% |
| T-test for differences in means (DCA, DBA) | 0.052 ns | -0.704 | 0.189 ns | 0.514 ns | .0.268 ns |

We find no significant administrative differences between the two agencies.

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