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Perpetually locked form: theoretical and practical profiles

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Topics – questions/1

- Which perpetually locked forms are currently used in practice to realize purpose driven enterprises?
- Which are the origins and which is the theoretical background?
- Which is the role of comparative law?
- Which is the relevance of competition between jurisdictions?

Topics – questions/2

- Does it make sense to subordinate businesses to the ideas of a deceased founder?
- It might be possible to create an immortal corporation with asset locks, but the players (members of the board, shareholders, creditors, employees, customers etc) will still be humans and thus not immortal (unless substituted by AI systems).
- Do we need new company law forms in the EU that allow for asset locks other than for marketing reasons (competition between jurisdictions?
- When do we need a purpose driven enterprise in practice (... ESG ... other sustainability issues ... succession planning within a family ... asset protection ...)?

Practical analysis of some existing models

- One approach is the single foundation model.
- A more complex approach is based on the dual foundation model.
- Limited partnership or limited liability company (e.g. GmbH, Srl etc) with reservation of special voting structures.
- Furthermore, there is the veto-share model.

Practice: single foundation model

- Most company shares are held by a nonprofit (eg German, Liechtenstein, Italian) foundation.
- The foundation does not distribute profits to private individuals.
- Ideally, the used foundation type has two governing bodies, one handles the voting rights in the company while the other distributes profits for charitable purposes.
- Advantage: very efficient in offering long-term and secure structures.
- Disadvantage: subject to state supervision.

Practice: double foundation model

- The voting rights and dividend rights of the company are separated clearly.
- The dividend rights are held by a nonprofit foundation or an association.
- The voting rights are held by a different foundation or a limited partnership.
- Some of the dividend rights and/or voting rights might also be held by a private family foundation.
- Advantage: very efficient in offering long-term and secure structures.
- Disadvantage: subject to state supervision.

Practice: reservation of special voting structures

- A limited partnership or a limited liability company is established.
- Voting rights/voting shares are reserved for executives or employees.
- An independent advisory board serves as a neutral oversight body.
- Advantage: suitable for smaller businesses where a single foundation or double foundation model would be too expensive to establish and maintain.
- Disadvantage: a permanent asset lock cannot be guaranteed with such a structure.

Practice: veto-share model

- A foundation holds a small stake of the company, but gains veto power over changes to the articles.
- The foundation statutes oblige the bodies of the foiundation to exercise the veto right to protect the purpose of the enterpriese.
- The compliance of the foundation bodies with the foundation statutes can be enforced in court and/or through the administrative body which is in charge of the surveillance (depending on the foundation law applicable).

Theory regarding the principles of capital lock-in

- Generally, company law enables long-term capital commitment.
- Shareholders can‘t withdraw capital unilaterally.
- Corporate governance sets the priority on enterprise continuity.
- These historical facts need to be considered when dealing with contemporary questions of long-term stakeholder focused purposes and with steward ownership.

Importance of entity status

- Company as a separate legal person.
- Property and contracts owned by the entity, not individuals.
- Companies have always enabled continuity despite shareholder turnover.
- Steward ownership can be realised by using a legal entity (company, corporation) rather than an individual business.

Shift from partnerships to corporations

- Typically, partnerships have always allowed capital withdrawal anytime.
- On the contrary, companies have always prevented capital extraction without board approval.
- This rigidity allowed stable, long-term planning.
- Hence, corporations per se are tools that are naturally a suitable basis for the realisation of steward ownership.

Rise of the corporate form

- Became dominant in 19th-century business.
- Suited for industrial expansion and large-scale projects.
- Met the demand for durable, capital-intensive entities.
- It has alway been possible to realise a purpose driven business activity by using the corporate form.

Core legal innovations

- Asset partitioning: separation of business and personal assets.
- Governance separated from capital contribution.
- Shareholder control limited to voting, not operations.

Questions regarding team production

- Complex businesses require diverse, specific inputs.
- Outputs are collective, not easily attributed to individuals.
- Corporations coordinate and protect team investments.
- Corporations, other than other forms of business forms, can focus on a specific purpose with a long term perspective (e.g. stakeholder interests, environmental sustainability etc.).

Structural limits to proprietorship and partnership

- Proprietorship: limited scalability and vulnerability to owner's life.
- Partnerships: prone to dissolution and capital withdrawal.
- No protection for long-term investment or third-party reliance.

Companies enable capital commitment

- The Capital is locked-in for enterprise use.
- Shareholders bonded to long-term viability.
- Other stakeholders (e.g., banks, suppliers) are encouraged to invest.
- Thus, the corporation enables long-term commitment regarding specific purposes.

Board of directors as central authority

- Decisions made independently of shareholders.
- Prevented opportunism and ensured stability.
- Reduced internal conflict over capital use.
- Board of directors bound by corporate goals (that may go beyond profit making).

Limited liability and asset shielding

- Personal assets protected from corporate liabilities.
- Corporate assets protected from shareholder debts.
- Enhanced trust and investment in the corporate model.
- The corporate model might focus on interests that are not limited to the shareholder’s economic interests, but that may focus primarily on stakeholder interests.

Evolution of organizational capital

- Firms accumulate skills, routines, reputations.
- Physical and human capital reinforce corporate durability.
- Organizational capabilities can be considered as competitive advantages, especially when the company has a focus on environmental and social sustainability.

Long-term institutional building

- Corporations enable planning over decades or centuries.
- Investments in infrastructure, systems, and reputation.
- Surpassed what individuals could achieve through contracts alone.
- Thus, purposes of a business entity can be achieved on a long-term perspective (without lifetime limits).

Investor confidence and liquidity

- Public investors attracted by predictable governance.
- Stocks provide liquidity without capital withdrawal.
- Facilitated market development and wealth distribution.
- Investors can opt for specific investment based on various aspects (including social and environmental sustainability).

Role in economic development and aspects of sustainability

- Companies are ssential to industrialization, modern capitalism and achievement of sustainability goals.
- Companies enabled mass production, R&D, and technological innovation.
- Companies stabilized employment and supplier networks.
- Most recent factors: long-term perspective of the business, stakeholder interests, economic and social sustainability etc.

Separation of ownership and control

- Creates agency issues but also specialization.
- Allowes managerial expertise to flourish independently.
- Shareholders focus on investment, not operation.
- Separation of ownership and control is one of the key elements for a purpose driven business that takes into consideration primarily stakeholder interests.

Legal and economic implications

- Lock-in helpes solve contracting and holdup problems.
- It makes the firm a more reliable platform for collective effort.
- It is supported by evolving legal and economic theories, especially when it comes to the achievement of stakeholder interests.

Social impacts of incorporation

- Incorporation creates middle-class managerial class.
- Workers and professionals trust corporate durability.
- Corporations have become social as well as economic institutions.
- Thus, it is natural that the stakeholder interests are considered in all companies.

Corporate asset locks

- Which is the focus of asset locks in corporate structures?
- Is there a European trend toward purpose-driven enterprises?
- Which forms are suitable to be used in order to realise corporate asset locks?

Purpose of steward ownership

- Reinforces long-term value creation.
- Profits are reinvested, not distributed as dividends.
- Asset lock ensures corporate purpose replaces profit extraction.

Asset lock defined

- Prohibits profit distribution during business life.
- In liquidation, only capital repayment is allowed.
- Prevents conversion to profit-oriented structures.

Key legal features of steward ownership

- Typically the asset lock is not only temporary but absolute.
- No dividends; limited liquidation claims.
- Focus on internal reinvestment and purpose.

European legal compatibility

- Questions on EU freedom of establishment (Articles 49 ss. TFEU).
- Asset locks common in EU despite concerns.
- Argued to be legally defensible under EU law.
- Argument: profit-orientation at company level satisfies Article 54 TFEU.
- Foundations and hybrid forms likely included.
- Also trusts as holding structures are protected within the EU by the fundamental freedoms.

Rise of social entrepreneurship

- Social entrepreneurschip blends commercial practices with social goals.
- Shift from shareholder primacy to stakeholder value.
- Legal innovation in many EU Member States.
- Still not fully accepted by the majority of business players.

Verious legal models

- US: Benefit Corporation.
- Italy: Società Benefit
- UK: Community Interest Company (CIC).
- Sweden: SVB companies with profit caps.

Core regulatory themes

- Purpose beyond profit maximization.
- Governance accountability.
- Financial restrictions including asset locks.

Legal Status and Labels

- Some countries apply status/labels, not legal forms.
- E.g., France’s “société à mission,” Denmark’s social economy label.
- Labels enforce purpose, governance, and profit limits.

Cooperatives, foundations and trusts

- Cooperatives: democratic governance, partial profit caps, long tradition.
- Foundations and/or (perpetual)Trusts can be established e.g. under Liechtenstein Law the law of San Marino etc., holding corporate assets: full asset lock, no transformation allowed.
- Strong purpose-driven continuity.

Perpetually locked forms enable steward ownership

- Companies held in trust for future generations.
- Reinventing traditional family business values.
- No external sale; long-term independence.

Steward ownership by using perpetually locked forms

- No mandatory social/environmental purpose.
- Strong legal asset lock, flexible mission.
- Contrast with benefit and social enterprises.

Conclusion/1

- Asset locks have always existed, for various purposes.
- Sustainability-driven asset locks gain traction across Europe.
- The need for perpetually locked forms will lead to a sustainable corporate reform in various jurisdictions of the world.
- Legal clarity and harmonization remain key challenges.
- Competition between jurisdictions regarding the best model to realise perpetually locked forms.

Conclusion/2

- There is a huge competition between European jurisdictions regarding company law in general and more specifically now regarding companies that allow for an asset lock.
- It is false to discuss the asset lock initiatives in various European jurisdictions within the ESG (Environments, Social, Governance) debate only.
- Any national model that creates a specific form of asset lock (such as the German draft) shall always be an optional model and the existing models (single foundation model, dual foundation model etc) need to be kept alive, because they work very well.

Conclusion/3

- The traditional legal forms shall never be stigmatized as beeing unresponsible.
- It is questionable if a perpetual subordination to a possibly deceased founder is appropriate for company law.
- Business typically need flexibility.
- A permanent subordination might often be detrimental.

Conclusion/4

- The owners of the company might always extract assets from the company through high salaries, silent partnerships, shareholder loans etc.
- The creation of a new company law form allowing explicitely for an asset lock doesn't seem to offer more legal certainty than the existing models.
- It is hard to understand the legal advantages for such new company law forms.
- Anyway, it seems to be a great idea to introduce in specific member states such specific forms in order to attract business and in order to success in the competition between jurisdictions.

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