

# HYBRID ENTITIES IN SWITZERLAND

## Can swiss entities pursue for-and non-profit purposes at the same time?

**Swiss law does not contain a dedicated legal form for hybrid entities or benefit corporations. The question is therefore whether existing legal vehicles may allow entrepreneurs to pursue for- and non-profit purposes at the same time. In other words, can a Swiss entity blend profit and financial returns for investors together with a public utility impact? This short article intends to provide a panorama overview of the Swiss legal framework and the possibilities offered by the current legal system.**

### 1. INTRODUCTION

In 2008, the financial crisis hit the world's economy hard and had a strong impact on the millennial generation, who represent today's entrepreneurs. But every cloud has a silver lining and out of the ashes of the crash was born a new type of economy, which is often referred to as the fourth sector [2].

Historically, entrepreneurs had to choose between realising profits or pursuing non-profit purposes (philanthropy). But today's entrepreneurs have to navigate in a new world, in which making profits comes together with the urge to create a positive impact on society, which also often matches the interests of "responsible" investors. The paradigm shift is palpable. Companies are expected to consider the interests of all stakeholders, and not only of their shareholders, and a long-termist, sustainable view is expected from management [3].

This trend is observable worldwide and takes various legal forms and classifications [4], such as social enterprises, blended enterprises, benefit corporations, low-profit limited liability companies (L3C), dual- or multi-purpose entities, flexible- or social purpose corporations, low-profit LLCs, benefit corporation, etc. For purposes of this paper, we will stick to the overarching definition of "hybrid entities".

In Switzerland, contrary to other jurisdictions, the legal system has not been amended to encompass this duality. Furthermore, this topic is not (at all) on the political agenda at the moment, as the Federal Council has recently pointed out [5].



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Swiss law therefore requires from those who desire to set up a hybrid entity to adopt either the form of a corporation (LLC or LTD; chapter 2 below), a cooperative (chapter 3 below), or a charity (chapter 4 below). While none of these structures were initially thought to serve dual purposes, the flexibility of Swiss law allows entrepreneurs to go quite far in reaching this objective. The purpose of this article is therefore to provide for an overview of the advantages and disadvantages of Swiss legal entities when they try blending both for-profit and non-profit purposes under one roof [6].

This article focuses on corporate structuring, and does not deal with tax-related questions, in particular the questions of whether corporations could benefit from tax exemptions if they pursue public-utility purposes, or whether tax-exempted charities should be able to pursue a commercial activity.

### 2. CORPORATIONS (LTDS AND LLCs) AS HYBRID ENTITIES?

**2.1 Principle.** The two main forms of corporate vehicles in Switzerland are the *company limited by shares* ("LTD") [7] and the *limited liability company* ("LLC") [8] (together referred to as "corporations"). Both are entities held by shareholders, with their own legal personality, and sole liability for their own debts. The core structure and purpose(s) of these entities are set in their articles of association, which can be supplemented by organisational and governance rules. The purpose of corporations must in principle be of an economic nature (*i.e.* a for-profit purpose) [9]. The corporation must therefore pursue the objective of making profits for the benefit of its shareholders [10].

In the following three sections, we will review how Swiss law has evolved, and what possibilities it offers today, in order to fit hybrid purposes under the legal structure of LTDs or LLCs.

**2.2 From shareholder primacy to stakeholder value and the birth of the 4<sup>th</sup> sector.** Traditionally, corporate law re-

quired that directors place profits and shareholder value (maximisation of financial returns for shareholders) above all other objectives. This is generally referred to as the *shareholder primacy principle*. Swiss corporate law therefore contained (and still does) mechanisms forcing directors to adopt an approach which primarily benefits the shareholders and leaves ultimate control with them [11]. In particular, directors could not decide unilaterally to retain or use benefits for purposes other than distribution to the shareholders [12].

This rather inflexible view of corporate law does not sit well with the multi-purpose approach of hybrid entities. But nowadays, the shareholder primacy principle is counter-balanced by a number of other forces.

The starting point, which was initiated decades ago and is now largely recognised [13], was the corporate social responsibility movement [14]. As Peter/Jacquement put it, today's "rules of the game" are not limited anymore to state laws and regulations. Rather, they require consideration to be given to economic, social and moral requirements, which sometimes may even prevail [15].

It is also undeniable that there is globally increasing awareness for, and focus on environment and social matters, which are forcing companies to consider purposes other than pure profit-making (by way of an example, see the 17 UN Sustainable Development Goals of the World's Agenda for 2030).

In Swiss corporate law, one may consider that a legal basis has always existed for for-profit entities to adapt to social businesses. Indeed, according to Article 717 para. 1 of the Swiss Code of Obligations ("SCO"), board members and corporate directors have to exercise their duties by taking into consideration the interests of the shareholders and of the company itself, as opposed to solely the interests of the shareholders. In other words, one has to consider that a company has a distinct and autonomous liability, which differs from the sole pursuit of profit making for its shareholders. According to leading legal scholars, this could be the legal basis of the *stakeholder value theory* in Switzerland [16], as long as decisions taken in the interest of stakeholders also serve the company's interests in the long run (sustainability) [17].

To illustrate evolution in this matter, the *Swiss Code of Best Practice for Corporate Governance*, edited by *economiesuisse*, has in its latest revision in 2014 deleted references to the interests of the shareholders only, and evolved towards stakeholder values. This evolution has also been recognised by the Swiss Supreme Court, according to which the interests of stakeholders other than the shareholders must also be considered in the decision-making process [18].

Finally, there are some positive signs from corporations which spontaneously amend their purpose clause and embed stakeholder values in their statutes, such as for instance Nestlé or Novartis [19].

What this evolution seems to demonstrate is that Swiss corporations might not need a new legal structure in order to enhance their purpose to include social benefit purposes, besides the primary profit-making purpose. The current legal system might in fact already allow for enough flexibility in this respect. One question remains, however: is it sufficient? Does Swiss law allow one to go one step further and consider

the interests of all shareholders at the same level (and profit-making for shareholders not above others)?

This question is being asked worldwide [20], with entrepreneurs increasingly motivated by social aims and new business models. Given that in general "for-profit and nonprofit

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legal and tax models are not designed for the simultaneous pursuit of social and financial bottom lines" [21], some countries have already made legislative amendments in order to solve the recurring issue of the appropriate legal form [22]. The birth of these new companies, structured in their own legal form, is sometimes referred to as the 4<sup>th</sup> economic sector [23]. Swiss law has not made such a move, and the Federal Council does – a priori – not intend to move in this direction [24].

**2.3 Third-party accountability: labels and standards (B Corps).** The absence of a dedicated legal status to address the needs and goals of hybrid entities has led to initiatives from the private sector, namely the creation of assessment standards, like the B Corporation certification of the B Lab organisation. B Lab defines itself as "a nonprofit that serves a global movement of people using business as a force for good" [25].

The certification granted by B Lab based on an assessment of the company measures its "entire social and environmental performance", and evaluates how a company's operations and business model impact workers, community, environment and customers [26]. In other words, B Lab certification designates companies that have, globally, a positive impact on society rather than a focus on maximising shareholder profits. There are many great examples worldwide of commercially successful B Corporations, such as Patagonia, Ben & Jerry's, Kickstarter and Nature & Découvertes.

In Switzerland, B Corp enthusiasts have to comply with the existing legal framework and the requirements imposed by the B Corp label. To this end, B Lab requires that Swiss companies "adopt governing documents which include a commitment to a 'triple bottom line' approach to business" [27].

In practice, this means that companies must amend their articles of association to reflect the following principles [28]: (i) promote the benefit of their shareholders, but also have a material positive impact on society and the environment, (ii) consider a range of stakeholder interests (including shareholders, employees, suppliers, society and the environment), and (iii) consider that shareholder value is not the supreme consideration but one factor amongst the many stakeholder interests which board members need to consider when running the business.

In Switzerland, there are currently twenty companies certified as B Corps, across all sectors of industry [29]. About half of them are LTDs, the other half LLCs, and one is a cooperative.

With regards to incentives, it is important to bear in mind that such entities do not generally benefit from tax exemptions by virtue of their multi-stakeholder approach. They remain for-profit entities and are taxed as such.

**2.4 Non-profit corporations (Article 620 para. 3 SCO)** [30]. In Switzerland, another widely unexplored [31] but existing option is to set up a non-profit corporation [32].

According to Article 620 para. 3 SCO, a company limited by shares may also be established with a non-economical purpose [33], meaning with an “ideal” purpose. Such purposes could for instance lean towards culture, philosophy, public-utility, religion, politics and leisure [34]. The existence of corporations with non-commercial purposes is widely recognised by legal scholars [35], as well as by Supreme Court case law [36]. Recently the Federal Council has also reiterated that the current state of Swiss law authorised the creation of corporations with non-economical purposes [37].

Even though the possibility of setting-up a corporation with a non-commercial purpose has clearly been contemplated by our legislator, it is largely unknown and even less used. In our opinion, the reasons are these: viewed as an alternative to a foundation or an association, a corporation with non-economical purposes will face difficulties with fundraising and obtaining public subsidies [38]. It will also quite likely not be able to benefit from tax exemptions. In addition, Swiss law requirements are often stricter for corporations than they are for associations and foundations, in particular when it comes to the fiduciary duties of management and accounting [39]. These may be some of the reasons why, up until now, social entrepreneurs have favoured foundations or associations if they were willing to pursue non-profit purposes.

**2.5 Conclusion on corporations.** Swiss corporate law has not been thought up for hybrid structures, and there is no dedicated legal vehicle to this end. That being said, corporate law is in our view flexible enough to allow for interests other than purely for-profit ones to be considered. Besides, corporations may also clearly express in their statutes their intention to pursue multiple purposes, some of which may be of a non-economic nature. Finally, even if the legislator does not seem to be willing to develop the law in this direction, the private sector encourages such initiatives, notably through labels and standards like B Corps.

### 3. THE COOPERATIVE: A SERIOUS CANDIDATE FOR HYBRIDITY

**3.1 Introduction.** Cooperatives [40] are corporate entities composed of an unlimited number of individuals or commercial companies (but at least seven), who join together for the primary purpose of promoting or safeguarding their own interests. Cooperatives are businesses owned and run by and for their members [41], which may pursue a commercial activity to this end [42].

As opposed to corporations, the purpose of cooperatives is based on a member-centred concept (similar to an association), rather than on making profits and retributing only the investment of shareholders. In other words, while corpora-

tions represent a capital divided in shares, cooperatives are a reunion of economic forces of a personal character [43].

**3.2 Purpose(s).** According to Article 828 para. 1 SCO, cooperatives primarily pursue economic purposes (i.e. the economic purpose of their members), but they may pursue, next to such economic purposes, other purposes, as long as they also serve the interests of their members [44].

The ordinance on the register of commerce seems to push it even further since it contemplates that cooperatives with pure public utility purposes may also be validly registered

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(see Article 86 let. b para. 2 Swiss Ordinance on Register of Commerce, “ORC”) [45].

It must also be noted that cooperatives are authorised to consider the interests of other stakeholders (i.e. interests of non-members) [46].

Two famous examples of cooperatives in Switzerland are the two largest retail food-stores: Coop and Migros. In both instances, their articles of association stipulate that the cooperative must foster not just the interests of its members but also consumers and other stakeholders.

**3.3 Distribution of dividends and other specificities of cooperatives.** While corporations look to realising benefits for their shareholders and distribute them via dividends, cooperatives, conversely, tend to provide benefits to their members through concrete actions (rather than through a distribution of profits) [46<sup>bis</sup>].

Notwithstanding this, a limited distribution of dividends is authorised as contemplated under Article 859 para. 2 and 3 SCO [47]. For such a distribution to take place, the following conditions must be met: (i) the cooperative must have made benefits, (ii) the articles of associations of the cooperative must contemplate the possibility of a distribution of dividends, (iii) the distribution must be made in proportion to the share of capital, and (iv) the percentage of the distribution may not exceed the usual rate of interest for long term loans without special security (which means that the shareholder of a cooperative may not be remunerated more than an ordinary lender) [48]. The practical consequence of these conditions is that the return on capital investment is limited, and resembles more closely the payment of interest than a proper return on investment.

This limitation is mainly triggered by the philosophy of the cooperative, which has at its core the common action and benefit of its members and the fact that it does not intend to pursue profits for itself, but rather to favour indirectly the economic interests of its members [49].

Another significant difference to corporations is the principle of “one man, one vote”. According to Article 885 SCO, every member of a cooperative is entitled to one vote, irrespective of the number of “shares” that he or she may have. This rule echoes the principle of equality of all members contemplated under Article 854 SCO and is part of the ethical grounds of the cooperative [50]. As a consequence, no member may benefit from a veto or take control of the cooperative by buying more shares of the capital.

**3.4 Conclusion on cooperatives.** The cooperative seems to be an appropriate legal vehicle when it comes to pursuing for- and non-profit purposes at the same time, in particular given that (i) it may pursue various purposes, and (ii) it is not centred on profit-making but nevertheless authorises the distribution of (limited) dividends.

It has been used in the past by very large, successful and sustainable businesses, which may have been visionary in this respect. In a way, it is a model of “social entrepreneurship” that existed even before it became an economic theory. This vehicle is however rarely considered nowadays (in fact, the number of cooperatives in Switzerland is lower today than 50 years ago), in particular in the non-profit sector [51].

#### 4. CHARITIES PURSUING BUSINESS PURPOSES

Unlike in the first part of this article, in which we considered the possibility for corporations to pursue also non-profit purposes, this section takes another angle, namely that of associations and foundations [52] (hereafter referred to as “charities”) pursuing business purposes.

At the outset, it must be pointed out that charities do not have shareholders. They may therefore not distribute profits, which makes them unsuitable for investments. One of the main drawbacks of using an association or foundation for a commercial, for-profit, purpose, is therefore that an entrepreneur cannot be the owner of its projects, as those entities have no share capital [53].

The question as to whether charities may pursue a business purpose is therefore mostly narrowed to whether or not they may have a commercial activity, and not whether they can make a profit for their shareholders (which they may not).

For charities, tax exemptions are essential, but they come with a price, namely that they may only pursue limited commercial activities. Tax-exempted entities must indeed operate on the basis of their initial capital, or on donations and subventions, and they may have only a limited revenue-generating activity [54]. However, as stated in introduction, this article focuses on corporate structuring aspects, to the exclusion of tax-related issues.

**4.1 Foundations.** A foundation is in principle meant as a legal vehicle for charity. The other classical use of foundations is for pension funds. As a matter of *de facto* principle, foundations generally do not have commercial purposes or pursue commercial activities. But they could.

Even though this question was disputed, the Supreme Court has confirmed that nothing in the Swiss civil legal framework restricts foundations from having a commercial

purpose or activity [55], as long as such purposes are not contrary to the law [56]. Furthermore, legal scholars are also of the opinion that the principle of freedom of foundation and the lack of a provision prohibiting such activity allows foundations to pursue a commercial purpose [57].

Some scholars even argue that foundations are the best-fitted legal vehicle to conduct a commercial activity and pursue a public-utility purpose [58]. They refer to such entities as *corporate foundations* (*Unternehmenstiftungen*).

In practice, however, the practical specificities of foundations often outweigh their potential advantages, which is why this structure is rarely used to pursue an economic model [59]. The specific disadvantages of foundations are mainly that a foundation is an inflexible structure (its purpose may, in principle, not be amended) and it is therefore hard for it to adapt to and evolve in line with a changing commercial environment. In addition, foundations are subject to the supervision of a state authority, which renders their daily operations somewhat more complex.

Other possible corporate structuring includes foundations, such as the setting-up of a holding-foundation in which a foundation holds a share of a for-profit corporation, and controls its activities (also called a *shareholder-foundation*; *Holdingstiftung*; *fondation-actionnaire*) [60].

**4.2 Associations.** According to Article 60 para. 1 of the Swiss Civil Code (“SCC”) and Article 91 ORC, an association may in principle not pursue a commercial purpose. It must pursue an ideal purpose (non-profit purpose) [61].

For an association, having a commercial purpose means pursuing a commercial activity and distributing the results of that activity to its members, which is not tolerated by the Swiss Civil Code [62]. There are however situations involving commercial aspects which may be contemplated: First, an association may pursue a commercial activity for the benefit of third parties (i.e. to the exclusion of its members) [63]. In this case, the association is generally considered as having an ideal purpose [64]. Second, an association may have a commercial purpose without pursuing a commercial activity. This is for instance the case for professional associations [65].

However, legal scholars exclude the possibility that associations may pursue hybrid purposes, namely simultaneously commercial and ideal purposes, as it would inevitably lead to issues of appreciations and delimitations. In such instances, applicable laws on ordinary corporations should apply to the association concerned and it must be restructured as a corporation (Article 59 para. 2 of the SCC) [66].

To sum up, associations may pursue ideal purposes and, under certain conditions, commercial (for-profit) purposes, but they may not pursue both at the same time, which makes them improper for hybrid structures.

#### 5. CONCLUSIONS

Various countries around the world have moved to adapt their legislations and adopt new legal forms in order to meet the needs of hybrid entities.

In Switzerland, the Federal Council has concluded that existing legal vehicles (LTD, LLC, association, foundation and

cooperative) are suitable for implementing and developing social entrepreneurship. Our government says it will closely follow legislative developments in European countries, and encourage private initiatives like B Corporations, but does not intend to make any legislative amendments in this respect [67].

Seeing the glass half full, this could be good news. From the perspective of our authorities, which acknowledge the importance of developing multi-purpose entities, current legislation is sufficient to allow for such ventures. This would

mean that it should be possible to blend various purposes under one roof.

Our analysis would tend to confirm this. Indeed, corporations (LTDs and LLCs), as well as cooperatives, may pursue multiple purposes, at least to a certain extent and under certain conditions. Foundations also offer possibilities to pursue multiple objectives, with the limit of there being no investment opportunities, and the strict conditions imposed by tax exemptions. Associations appear ultimately to be more limited when it comes to pursuing hybrid purposes. ■

**Footnotes:** 1) The author thanks Prof. Henry Peter for his useful comments and valuable help in the preparation of this contribution. 2) Sabeti Heerad, *The For-Benefit Enterprise*, Harvard Business Review, November 2011. 3) Smith Chloé, *Corporate Social Responsibility et durabilité*, in Expert Focus, 6–7, 2016, p. 471 et seq. 4) Brakman Reiser Dana, *Blended Enterprise and the Dual Mission Dilemma*, Brooklyn Law School, BrooklynWorks, 35 Vermont Law Review, 2010, p. 105 et seq. 5) Interpellation 18.3455 of national council Molina Fabian, and related statement of the Federal Council of 22 August 2018. Interpellation 13.3689 of national council Mr. Nussbaumer Eric, and related statement of the Federal Council of 12 September 2013. 6) Similar analyses have been performed in other jurisdictions and have inspired this article. For an overview of the US legal system see in particular Brakman Reiser Dana, op. cit. The Thomson Reuters Foundation also published a number of studies in this field, amongst which, for the United States: *Which Legal Structure is right for my social enterprise? A guide to establishing a social enterprise in the United States*, 2016 (Morrison & Foerster LLP), for the United Kingdom: *Social Ventures: Which legal structure should I choose? A Guide for social entrepreneurs in England and Wales*, 2016 (Morrison & Foerster LLP and UnLtd); For Switzerland: *Pfammatter Vincent (sigma legal) and Wynne Julie (Froriep), Philanthropy and Social Entrepreneurship, A Guide to legal Structures for NGOs and Social Entrepreneurs in Switzerland*, Thomson Reuters Foundation, 2017, p. 53; all available at <https://www.trust.org>. 7) Article 620 et seq. of the Swiss Code of Obligations (“SCO”), RS 220. 8) Article 772 et seq. SCO. 9) Article 620 para. 3 SCO, a contrario, for LTDs and Article 772 for LLCs. 10) Meier-Hayoz Arthur, Forstmoser Peter, *Droit suisse des sociétés, avec mise à jour 2015*, Edition française par Iordanov Peter, ed. 2015, p. 490. 11) Peter Henry, Jacquemet Guillaume, *Corporate Social Responsibility, Sustainable Development et Corporate Governance: quelles corrélations?*, in SZW/RSDA 3/2015, p. 173. 12) Peter Henry, Jacquemet Guillaume, op. cit., p. 172. 13) Peter Henry, *La Corporate Social Responsibility 2.0, concrétisation d’un principe acquis*, in ExpertFocus 6–7, 2016, p. 469 et seq. 14) See for instance publication of economesuisse, *Corporate Social Responsibility from a Business Perspective*, July 2015. 15) Peter Henry, Jacquemet Guillaume, op. cit., p. 173, and the cited references. 16) Ibidem. 17) Neri-Castracane Giulia, *Les règles de gouvernance d’entreprise comme moyen de promotion de la responsabilité sociale de l’entreprise – Réflexions sur le droit suisse dans une perspective internationale*, Collection Genevoise, Genève/Zürich 2016, Schulthess Editions Romandes, p. 224. 18) For a study of case law

on this topic, see Neri-Castracane Giulia, op. cit., p. 225. 19) Neri-Castracane Giulia, op. cit., p. 349. 20) See articles and guides cited in footnote n°6 above. 21) Sabeti Heerad, op. cit. 22) For further information on this topic, see Ventura Livia, *The Social Enterprise Development and the Birth of Hybrid Entities. A Comparative Law Perspective*, published in the same edition of Expert Focus, p. 170 ff. 23) Neri-Castracane Giulia, op. cit., p. 350. 24) Interpellation 18.3455 and 13.3689, op. cit. 25) <https://bcorporation.net/about-b-lab>, last consulted on 30.11.2018. 26) <https://bcorporation.net/certification>, last consulted on 30.11.2018. 27) <https://bcorporation.net/certification/legal-requirements>, last consulted on 30.11.2018. 28) <https://bcorporation.net/certification/legal-requirements>, last consulted on 30.11.2018. 29) <https://bcorporation.eu/directory>, last consulted on 30.11.2018. 30) The situation is identical for LLCs. Since the reform of the law in 2007, the previously existing condition of article 772 para. 3 old SCO which provided that LLCs could only be established for an economic purpose has been removed, with the intention to confirm that LLCs could pursue either economic or non-economic purposes. The Report of the Federal Council on the amendment specifies that LLCs should, besides economic purposes, be authorised to pursue ideal purposes of public utility. 31) Baudenbacher Carl, *Basler Kommentar zum Obligationsrecht II*, Helbing Lichtenhahn, Basel, 2016, ad Art. 620, n° 2. 32) Baumann Lorant Roman, Markowitsch Sandra-Jane, *Die Gemeinnützige GmbH, Auslegung einer kaum genutzten Alternative zur Stiftung*, Expert Focus 3/2016, p. 136 et seq. 33) Lombardini Carlo, *Commentaire Romand du Code des Obligations II*, Helbing Lichtenhahn, Basel 2017, ad art. 620 n° 42–43; Baudenbacher Carl, op. cit., ad Art. 620, n° 2. 34) Meier-Hayoz Arthur, Forstmoser Peter, op. cit., p. 490. 35) Meier-Hayoz Arthur, Forstmoser Peter, op. cit., p. 490; Montavon Pascal, Montavon Michael, Bucheler Rémy, Jabbour Ivan, Matthey Alban, Reichlin Jeremy, *Abrégé de droit commercial*, Schulthess 2017, Zürich, p. 236. 36) Swiss Federal Court decision, 25 February 2016, B\_3502/2014, para. 4.1. 37) Interpellations 18.3455 and 13.3689, op. cit. 38) Baumann Lorant Roman, Markowitsch Sandra-Jane, op. cit. 39) Jakob Dominique, Huber Romand, Rauber Katharina, op. cit., p. 16. 40) Articles 828 to 926 SCO. 41) Pfammatter Vincent, Wynne Julie, *Philanthropy and Social Entrepreneurship, A Guide to legal Structures for NGOs and Social Entrepreneurs in Switzerland*, Thomson Reuters Foundation, 2017, p. 53. 42) Jakob Dominique, Huber Romand, Rauber Katharina, op. cit., p. 14. 43) Meier-Hayoz Arthur, Forstmoser Peter, op. cit., p. 744. 44) Meier-Hayoz Arthur, Forstmoser Peter, op. cit., p. 747. 45) Meier-Hayoz Arthur, Forstmoser Peter,

op. cit., p. 747. 46) Meier-Hayoz Arthur, Forstmoser Peter, op. cit., p. 749 and cited references. 46<sup>bis</sup>) Meier-Hayoz Arthur, Forstmoser Peter, op. cit., p. 744. 47) Reymond Jacques-André, *Traité de droit privé suisse, Volume VIII, Droit commercial, Tome III/1, La Coopérative*, Helbing & Lichtenhahn, Bâle et Francfort-sur-le-Main, 1996, p. 162 et seq. 48) Neuhäus Markus R., Balkanyi Patrick, Basler Kommentar zum Obligationsrecht II, Helbing Lichtenhahn, Basel 2016, ad Art. 859, n° 6. 49) Reymond Jacques-André, op. cit., p. 4. 50) Chabloz Isabelle, *Commentaire Romand du Code des Obligations II*, Helbing Lichtenhahn, Basel 2017, ad art. 885 n° 2 et seq. 51) Jakob Dominique, Huber Romand, Rauber Katharina, op. cit., p. 14. 52) Articles 80 SCC et seq.; Articles 60 SCC et seq. 53) Wynne Julie, *La société à but non lucratif, un nouveau modèle pour l’entrepreneur social?*, 26 May 2016, Newsletter of Sustainable Finance Geneva. 54) Baumann Lorant Roman, Markowitsch Sandra-Jane, op. cit. 55) As recognised by the Swiss Supreme Court in Swiss Federal Court decision, 75 II 81 (Holding-Foundation) and Swiss Federal Court decision, 120 II 137, para. 3 d; See also Swiss Federal Court decision, 127 III 337, para. 2a. 56) Swiss Federal Court decision, 110 Ib 17, para. 3d. 57) Grüniger Harold, *Basler Kommentar zum Zivilgesetzbuch I*, Helbing Lichtenhahn, Basel 2014, ad Art. 80 SCC, n° 17–22. 58) Würmli Martin, op. cit. 59) Swiss Federal Court decision, 127 III 337. 60) Riemer Hans Michael, *Rechtsprobleme der Unternehmenstiftungen*, ZBJV 116/1980, 489 et seq.; For further information on this topic, see Delphine Bottge, *Shareholder Foundations (Holding Foundations) in Switzerland, Overview from a legal perspective*, published in the same edition of Expert Focus, p. 180 ff. 61) Swiss Federal Court decision, 127 III 337, para. 2b. See Article 60 para. 1 SCC which reads in the translation available at <https://www.admin.ch/opc/en/classified-compilation/19070042/index.html>: “Associations with a political, religious, scientific, cultural, charitable, social or other non-commercial purpose acquire legal personality as soon as their intention to exist as a corporate body is apparent from their articles of association”. 62) Jeanneret Vincent, Hari Olivier, *Commentaire Romand du Code Civil I*, Helbing Lichtenhahn 2010, Basel, ad Art. 60, n° 14, ad art. 60, n° 7. 63) Jeanneret Vincent, Hari Olivier, op. cit., ad art. 60, n° 8. 64) Jeanneret Vincent, Hari Olivier, op. cit., ad art. 60, n° 8. 65) Jeanneret Vincent, Hari Olivier, op. cit., ad art. 60, n° 8. 66) Jeanneret Vincent, Hari Olivier, op. cit., ad art. 60, n° 14. 67) Interpellation 18.3455 and 13.3689, op. cit.. See also Normand Jonathan, *Les objectifs sociaux et environnementaux dans les statuts de l’entreprise*, in LeTemps Blog, 3 September 2018.