

THE RESULT OF CULTURAL AND LEGISLATIVE CHANGE: THE NEW MONISTIC MODEL OF UBI BANCA

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Abstract

Every country, on the basis of their experience and capitalism model, has developed different systems of corporate governance (Charkham, 1994; Nobolo, 2005; Magli & Nobolo, 2006; Magli, 2011).

In Anglo-Saxon countries the legal structure of companies is established such that shareholders have a superior position compared with other stakeholders. Indeed managers are bound by a relationship of trust with the shareholders that have elected them, and are therefore under a strong obligation to act in their interests.

In the Japanese/German system, however, there is a more evenly distributed picture, as all interests that gravitate around the company are held in equal consideration. The model applied is that of co-determination (mitbestimmung) (De Luca, 2001), sanctioned by legislation in 1967 and applied to companies with more than two thousand employees.

Both approaches give importance to those who influence fundamental decisions. The structure of company members therefore holds great importance; in particular, in Anglo-Saxon countries there is an exclusive governance body (the board of directors), whereas the German structure is characterised by the presence of a dual system, based on a management board (Vorstand), or active administration or management, and a supervisory board (Aufsichtsrat).

The two systems described above are usually defined as a monistic system, the first (characterised by one body) and the second a dual or dualistic system (Panzironi, 2009).

For many years, in various European countries, there were debates on the opportunities and methods of harmonising European company law; these debates led to the European Conference in Nice and finally, chiefly in Italy, to the Mironi proposal, a company law reform proposal.

One of the most important introductions brought about with company law reform in Italy (Legislative Decree no. 37 dated 6th February 2004), is represented by the possibility for limited companies to choose between three management and supervision models: the traditional model, the dualistic model (of German origin), and the monistic model (of Anglo-Saxon origin).

In our study we analyse dualistic and monistic systems and their application in Italian quoted companies, especially in the banking sector. We selected this sector because limited banking companies were created in Italy in a recently period (2006-2007), as a result of national amalgamation and merger operations; this phenomenon of company mergers was subsequently implemented, with respect to other industrial sectors and other countries. The main Italian mergers in the credit sector have created Intesa San Paolo; Banco Popolare; UBI banca and Unicredit. While the first three originated from Italian associations, Unicredit took over a German bank in 2005, then, in 2010, it joined up with some Italian banks. The dualistic model, in the first decade of the 2000s, was chosen by the first three banks (Intesa San Paolo, Banco Popolare and Ubi Banca) and Mediobanca. The latter, in 2003, began a profound process of change that transformed the bank from a holding company to a real banking group, with highly specialized banking activities. Mediobanca was the first Italian company to adopt dual governance.

One of the main criticisms arising from the adoption of the dualistic system in banks limited companies concerned an aspect which is purely technical, in other words it concerned the fact that the Supervisory Board appoints the members of the management board. This leads to a possible deviation from point e) in article 14 of TUB (Testo Unico Bancario – Banking Law in Italy legislation), as the requirement for members appointed to administrative, management and supervisory roles to be independent may not be met.

Because of these difficulties in applying the dualistic system and because some legislative changes, in particular to the Supervisory Provisions on the corporate governance of banks, issued by the Bank of Italy under the governorship of Mario Draghi, subsequently systematized and merged into the Circular n. 285 of 17 December 2013 in Italy, the one-tier system has been rediscovered.

The legislators believe that the one-tier model, like the dualistic system in the past (already tested by major Italian banks), could constitute an administration and control system suitable for responding to the needs of banks that operate to a significant extent on international

markets where these models are better known or are part of groups in which these organizational forms prevail.

At the end of our work after looking at why the other bank companies have chosen these types of management and supervision model, we illustrate an important case in depth, namely the governance system at UBIBanca. UBI Banca S.p.A. (Unione di Banche Italiane) is an Italian banking group of cooperative origin, born on 1 April 2007 from the merger between Banche Popolari Unite and Banca Lombarda. UBI Banca is based in Bergamo (a north Italian city) and is the holding company of the banking group. Ubi Banca in 2007 has also introduced, as corporate governance system, the dual system (Graziani, 2008) but in 2017 he decided to change and passed from dualistic to monistic (Davi, 2017, 2018).

The new reorganization of UBI Banca is finalized in April 2019 (Davi, 2019); it comprise a Board of Directors composed of 15 members formed by two thirds of independent directors and within which there is a Management Control Committee consisting of 5 members. This transformation brings some advantages, in particular management control committee will be more aligned with the Board, the decision-making processes will be faster, and the role of the assembly and the minority directors will be enhanced.

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