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Corporate governance rules for Italian listed companies: an asset or a burden?

An analysis of 2006 reforms in Italy

ABSTRACT

This study is aimed at offering an overview on how the recent reforms in corporate law have affected Italian listed companies.

The main focus is to show whether such laws (TUF, law on savings, and its amending decree) represent either an asset, or a burden on the companies.

This recent season of reform has resulted in creating a great difference in the regulation of non listed companies and listed ones. It has also generated a substantial asymmetry between ordinary stock companies and listed companies, with regards to the appointment system of directors, and the composition of the board of auditors.

Insight is provided regarding how, specifically, the management system was affected by the new provisions.

Finally the documents and audit control of the legal organisational statute of public companies is taken into scrutiny.

What is to be found is that an important part of the recent binding rules is to be agreed with; although the intervention of the law and of binding rules in the field of company organisation shall be measured cautiously, and mandatory solutions shall always be well pondered and regulated.

To a certain degree, both the old and the new public regulation represent an unjustified burden for Italian public companies, therefore simplifications and improvements still are desirable.

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Corporate governance rules for Italian listed companies: an asset or a burden?[*]

1. It should be preliminarily clarified what I intend by “corporate governance rules” and in which way it can be related to the issue on whether these rules might be either an asset or a burden on Italian listed companies.

I will refer only to those internal and organizational company rules aimed at regulating the direction and the control of businesses, for the minority shareholders’ and other investors’ benefit.

Hence, I shall not take into account, among others, the rules concerning solicitations of public investment and securities transactions and, in particular, the several market disclosure prescriptions that also represent a certain and considerable administrative cost for issuers.

Organizational rules cumulate with or substitute those belonging to common stock company law, thus increasing the binding level of the applicable company law. Since the adoption of the consolidated financial law (1998, hereinafter TUF), organizational rules became more and more important and numerous, especially after the law on savings (n. 262/2005), then revised in 2006 (amending decree n. 303/2006).

The special organizational regulation for listed companies limits their by-laws autonomy, it absorbs human and financial resources and it increases the level of the managing decision procedural system. It can therefore overburden the listed companies’ efficiency, raise their cost for gathering capital on the market and discourage the listing in itself. It also may be seen as an unsuitable interference of the law with the market and with the issuers’ life.

On the other hand, merits shall be attributed to the public regulation’s function of enhancing a more balanced and transparent (in a word, efficient) relationship between management and supervision, thus increasing the investors’ confidence and fostering capitals’ (even foreign) flow, towards the

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business funding: a task which apparently cannot be accomplished, or at least which is not accomplished in reality, by the market.

Therefore, based on the different points of view, these rules can be regarded as either a burden or an asset.

2. The Italian joint-stock company reform which took place in 2003 did not significantly stiffen the specific organizational system of provisions for listed companies.

It broadly widened, indeed, the role of self-government and autonomy among normal stock companies.

The increased number of references to self-government solutions was higher than 300%, resulting in the fact that nowadays there are more than a hundred (104) possibilities of autonomous choices that non listed stock companies can make. This circumstance has *de facto* increased the distance between the listed and the non listed companies' legal framework, although it must be kept in mind that sometimes the joint-stock company reform just extended to normal companies solutions already applicable for listed companies (examples can be found in the auditing board's functions and in the information flow regarding the latter).

The law on savings was, on the other hand, the reaction to the financial scandals that shook the capital market in recent years, and it almost exclusively concerns the governance of listed companies and reserves to them several and significant rules which enhance the level of imperativeness of the listed companies regulation.

This recent, streaming, season of reform has thus created a huge distance between the regulation of non listed companies and the listed companies' one, first by lowering the normative and mandatory step for "closed" companies and then by increasing the listed companies' one.

If one was to stick to prudential but certain data, more than a hundred binding rules can now be counted, even though it is not easy to provide figures, especially because of the broad reference of the law to secondary level regulation,

3. The failure of the intermediate “step” (category), represented by the companies whose shares are significantly spread among investors, contributed to the current situation. This category was created by the 2003 reform, aiming at improving the protection of minority shareholders in companies that, even without being listed, are open to the market, and also aiming at reducing the difference between the regulations they should comply with in order to be listed.

But this step is, at the end of the day, almost empty, since, according to the figures provided by Consob (National Commission for Companies and Stock Market) in July 2008, in Italy only 59 joint-stock companies fall within this category: two of these are in a winding up phase and two others are undergoing a bankruptcy procedure; 23 are cooperative companies, and in almost all of the cases they are banks. Very few belong to the industrial sector, and a slightly superior number belong to the services sector (Table 1).

The more or less 20 additional rules for the so-called “open” companies are in reality applied to a small group of companies, among which the ones belonging to the productive sectors are a non significant number.

4. Before attempting to explain those that, according to me, are the main aspects of governance after the introduction of the law on savings, it may be best to briefly examine first the issue of the true impact of the binding company law, and specifically of its organizational provisions, on the cross-boundaries capital flow and on a company’s decision to be listed.

It is well known that Wall Street was overtaken by London in terms of new listings (in 2006, 547 *vs* 491: The Economist, 2007), that particularly many foreign companies have, in the last years, avoided to get listed on the US market, that in the same years the delisting in the US was considerable and that, furthermore, in 2005 the European share of worldwide corporate bonds’ issuing overtook for the first time the US one (Figure 1-2; Table 2).

By many, even authoritative, commentators it was argued that this negative trend was highly influenced by the enactment, in mid 2002, of the Sarbanes-Oxley Act, the well known and perhaps over-estimated federal reaction to the Enron scandal. In particular, the responsibility for the decreasing number of listings was found either in the Sox provisions on the fairness statement of the annual accounts, and in its heavy penal consequences (up to ten years of imprisonment and a million dollar fine), or in those concerning the public accounting firms. Especially excessive and unjustified were considered to be the implementing rules adopted by SEC and by the new body competent for accounting services, the PCAOB (Public Company Accounting Oversight Board), to the extent that these rules were recently modified.

Many studies tried to calculate the effective costs borne by US companies in order to comply with Sox; one of these studies ended up stating that, for almost half of the US companies, the costs would be no less than 500,000 US dollars; while another analysis came to the conclusion of an average costs increase of 2,4 million US dollars only to afford the audit. Other studies tried to determine the overall Sox and other legislative provisions cost, calculated, in terms of market value loss, as being equal to 1,4 trillion US dollars.

Even though there were commentators opposing the theory of a cause-effect relationship between Sox and these market changes, and even though doubts can be brought to the reliability of the above mentioned figures, the US experience appears in any case to spread the message that the binding company law might represent a considerable financial burden, with costs that can be calculated, more or less, also in the short term and with consequences on the markets at least sensibly hypothesized, compared to benefits that are difficult to measure and in any case perceivable only in the long run.

I cannot determine whether these remarks are also applicable to the Italian situation or not.

Surely the Italian Initial Public Offerings' trend appears to be completely unlinked from the qualitative and quantitative size of the legislative gap that separates the ordinary stock companies from public companies.

The analysis of the new listings of the last years actually shows its substantial indifference to the legislative changes (Figure 3). After the introduction of TUF in 1998, an increasing trend of public companies appears to have taken place, moving from 243 in 1998 to 297 in 2000. A negative trend was afterwards observed, reaching its peak in 2003 with the highest delisting rate. Since 2005, just after the enactment of the companies reform in 2003, a new growing trend started, with 27 new listings in 2006, 20 in 2007 and 9 in the first part of 2008. At present (July 2008) the companies with financial instruments listed in Milan Stock Market are 218 ().

5. After the law on savings, a fundamental difference between the governance in ordinary stock companies and the listed companies' one can be indentified in the requirements and in the appointment system of directors.

I am hereby referring to the traditional system of direction and control, the one characterized by the presence of the board of directors and the board of auditors.

The directors of listed corporations shall meet the same integrity requirements prescribed for the control bodies' members (art. 147-*quinquies* TUF). Furthermore, according to the amending decree of the end of last year, at least one director shall also fulfil the same independence requirements of the auditors. The minimum number 3 of independent directors becomes then double in boards consisting of more than 7 members: situation more frequent among the listed corporations.

The law n. 262/2005 also introduced the minorities' right of electing one member of the board of directors.

The by-laws shall provide for "*the members of the board of directors to be elected on the basis of slates*" (art. 147-*ter*, 1st par., TUF). "*At least one of the members of the board of directors shall be elected from the minority slate that succeeded in obtaining the highest number of votes and is not linked in any way, even indirectly, with the shareholders who presented or voted the slate that was first in terms of number of votes*" (art. 147-*ter*, 2nd par., TUF).

There shall therefore be both independent and minority directors.

The presence of independent managers in the listed companies' boards is nowadays recommended by all the main international codes and principles of ethics, Reports, listing rules, European recommendations, etc.; indeed, the legislative provision may perhaps only cause overlapping problems with the code of ethics, that also prescribes them (apart from the fundamental remark I am about to express with regard to the effective utility of the mentioned codes and principles for our corporations). The law on savings itself has given legislative effectiveness – though in a bit of a confused way – to the rule "comply or explain", according to which it is mandatory to inform the market about the compliance with the code and about the fulfilment of the obligations provided by the latter.

The presence of independent directors is anyway, even after the introduction of the amending decree, still very small in reality, so that it can hardly achieve the adequacy criteria required by the code of ethics: actually the code requires that the number of independent members is to represent always at least the majority of internal committees' members.

The two different levels, the legislative and the code one, should complement each other rather than overlap, without particular difficulties, except perhaps for the independence requirements which are very different in the two cases.

The election of directors by the minority shareholders, topic which was completely left aside both by the code of ethics and by the company reform of 2003, generated, on the other hand, renown conflicting opinions on a political, academic and business level,.

It is worth clarifying that, in any case, not only does the right of appointment concern the minimum share of seats on the board (one) – share that is considerably far from being proportional or linked to the effective weight of the minority; but also the presence of one minority director is not even granted.

According to the new art. 147-*ter*, 1st par., TUF, actually, the articles of incorporation shall determine the minimum amount of capital ownership required, in order to be entitled to submit a slate, bearing in mind that it shall not be more than one fortieth of the share capital. The amending decree has then provided for a different amount of this share, to be determined by Consob with a regulation, taking into account the "*market value, the free float and the ownership structure of listed corporations*". The amending decree also introduced the provision according to which "*the bylaws may establish that, for the purpose of determining the directors to be elected, account shall not be taken of the slates that have failed to receive a percentage of votes equal to at least half the one required for their submission*".

Consequently, together with the case of non interested or totally passive minorities who may not submit any slate at all, there could also be the case of none of the minority slates allowed to be voted for having failed to reach the submission threshold. Threshold which is generally equal to 2,5% of the capital: honestly quite high, if we bear in mind that for the privatised state-owned enterprises the legal threshold is 1% and that those owning a share of a listed company superior to 2% are considered as owning a "relevant" share and are therefore subject to the special provisions of art. 120 and following articles of TUF. It is, for instance, worth noting that in a public company like ENI (privatised state-owned company), with more than 325,000 shareholders, the ones holding a share superior to 2% are only the two controlling ones, and that just 10 are the shareholders with share capital between 1% and 2%, and 10 owning shares comprised between 0,5% and 1% (Table 3).

Consob intervened in order to diversify the thresholds not only by lowering them (as it appeared suitable), but also by increasing them, according to the capitalization of the market, to the free float and to the existence of shareholders' agreements. The different thresholds then fall between 0,5% and 4,5% (new art. 144-*quater* of Consob issuers regulation).

To a significant number of companies (55) applies the 4,5% threshold, compared to the 202 listed companies to which the 2,5% one still applies. Lower thresholds apply to 59 companies (2% to 26 corporations, 1,5% to 17, 1% to 11, 0,5% to 5: Consob figures, July 2008).

If provided for by the articles, it may happen that, even when admitted to be voted for having reached the above mentioned threshold, the minority slate getting the highest number of votes may not reach half the percentage required for the submission (which should be, in most of the cases, the very high 1,25%), thus not being taken into account and the company ending up having directors elected only from the majority list.

At the end of the day, it is not at all certain for a minority director to sit on the board. These provisions bring nevertheless the benefit of selecting qualified minorities, generally represented by institutional investors, and to push them to coordinate in order to submit a common slate of directors, who should therefore also be independent form the different minority shareholders. But on the other hand, there seems to be no ground for a real representation of ordinary investors, provided they have any interest in being represented.

The new provisions also generate the positive effect of avoiding the election of directors who do not really represent minorities, even (as in the case regulated by the amending decree) the same minority who supported the submission of their slate. Both the rules, anyway, make the presence of a minority director quite uncertain (above any sensible precaution, I personally think), unless Consob intervenes with a wider and more impactful decrease of the thresholds.

How shall we evaluate the change then?

The opposing commentators do not agree with the presence of directors who may own personal interests, even competing with those of the company, and who may scheme against the other directors, thus destabilizing the company. With a figurative expression, someone wrote about a “balkanisation” phenomenon concerning the boards of directors.

On the other hand, supporters of the changes remark that only the presence of directors capable of expressing an independent opinion, which might be different from the majority’s, can give effectiveness to the monitoring role of the board of directors, especially with reference to the overall business strategy of majority shareholders and to the affairs with related counterparts. They also reply that the warned risks of conflicts and obstacles within the boards never really happened in the privatised state-owned companies, where the more than ten years experience of minority directors proved to bring results commonly estimated as positive.

According to me, in companies characterized by concentrated capital (as is the case in almost all Italian listed corporations), the independent managers selected by the majority shareholders themselves might in any case be connected to the latter, despite any legal provision, and might in any case face serious difficulties in fulfilling their duties. Independence has actually to be exercised not only towards the executive managers (both the independent and the executive directors being subject to the market judgement), but also and even more towards the controlling shareholders who are often less sensitive to the market and to the listing trends.

I am therefore personally in favour of the slate method and I think that the presence - within the board - of directors elected by minority shareholders can, generally speaking, improve the effectiveness of the board itself in what is now to be considered its fundamental duty, the monitoring one, and encourage a healthy dialogue for the settlement of the different (even strategic) interests belonging both to the majority and the minority.

On the contrary, the presence of both kind of directors (independent and minority directors), together with the low number of directors belonging to the one or to the other category (number which is inadequate both if solely or inclusively considered) and the possibility of not having a minority director at all, are altogether circumstances which warn against the real bravery and effectiveness of the legislative changes.

6. Another fundamental difference in the rules governing the listed companies and those concerning the ordinary ones, always in terms of the unitary system, regards the board of auditors' composition and duties, topic highly amended by the law on savings.

At least one auditor in office shall be elected by the minority shareholders, through a slate method and by rules set by Consob in order to avoid company articles to create obstacles to their elections, as it used to happen in the past.

The general assembly nominates the minority auditor (or one of the minority auditors in case there is more than one) as chairman of the board. In practice the chairman has even more prerogatives and regulatory powers (fundamental for organizing the board and controls) than those provided by law.

As for powers, the auditors have the individual power of asking information on the state of business transactions, or on specific affairs, directly (and not through directors) to the managing and supervisory bodies of the subsidiaries (art. 151, 1st par., TUF).

Of great importance is also the legislative choice of transforming into an individual power the one of calling a board of directors or a senior management meeting, while the call of a general shareholders' meeting still has to rely upon the initiative of at least two auditors (art. 151, 2nd par., TUF).

Furthermore, the auditors, in order to fulfil their duties, may individually require the cooperation of the company employees. The possibility also for the minority auditor to ask for an employee to support him was seen by the first commentators (following some US cases) as being of particular interest, since the absence of links between the executive directors and the majority shareholders on one side and the minority auditor on the other, may reassure honest employees and encourage them to point out irregularities of which they might know or suspect.

Finally, the amending decree gave to the board of auditors a significant weight in the appointment, removal and retribution (in compliance with the requirements that will be set by Consob) of the public accounting company: all these mentioned decisions shall now be taken by the general shareholders' meeting upon grounded proposal of the board of auditors (art. 159, 1st and 2nd par., TUF).

I personally agree also with the introduction of these additional rules concerning the board of auditors.

Avoiding to recollect the outcomes of an economical analysis according to which the internal auditor is not to be considered as a real gatekeeper, it is nonetheless of immediate perception that one or more auditors not appointed by the same shareholders, who also appoint the managers who are subject to the auditors' supervision, and therefore independent from the majority directors, can better exercise their supervisory duty, moreover if one of them is the president of the board itself. Nor can it be claimed that present experience regarding minority auditors, as arisen after the more cautious introduction of this category made by TUF in 1998, in any way gives ground to hypothetical concerns for a rash use of their functions and powers.

What, on the other hand, does give rise to perplexities, is the serious and evident overlapping of functions between the non executive directors and the auditors: an overlapping that comes clear despite any possible differentiation and that becomes even structurally material whenever a committee for internal control is constituted, as provided by the code of ethics and as it happens in almost all the listed corporations. The board of directors itself, obviously when it comes to the part of it represented by non executive members, has monitoring powers that, despite any possible effort of interpretation, seem to be much less effective if compared to those belonging to the board of auditors; although the 2003 reform stressed the importance of the board of directors in the organizational structure of the company, especially with regards to supervision.

In terms of efficiency, organizational simplification and costs limitation, all this represents a crucial aspect of the organizational regulation of Italian listed companies.

7. Most of the new provisions regarding the traditional management and control system were afterwards made applicable also to the two-tier and to the one-tier management system.

Nonetheless there are important differences in the rules, both in the unitary and in the two-tier system. For several reasons I, hereby, intend to concentrate on the latter.

First of all, as far as the supervisory board is concerned, the law on savings confirms the necessity of a minority member and is characterized for having extended to all of the supervisors the independence requirements provided for the internal auditors, throughout the reference made by art. 148, par. 4-*bis*, TUF to the previous third paragraph.

Differently from what happens for the supervisory body members in non listed companies, those of the listed issuers can neither be the spouse, the relatives and the like, up to the fourth degree of kinship, of the directors of the company (as well as spouses, relatives and the like, up to the fourth degree of kinship, of the directors of the subsidiaries, of the companies it is controlled by and of those subject to common control), nor can they be linked to the company (or to its subsidiaries, to the companies it is controlled by and to those subject to common control or to the directors of the company or the other people previously referred to) by professional or economical relationships that might compromise their independence.

On the other hand, with reference to the management board, the law on savings does not require a minority director; it requires only one independent member in the case that the board consists of more than four members (art. 147-*quater* TUF).

These choices are very questionable. Having required the independence of all of the supervisory board members prevents the majority, the representatives of the latter and the relatives of the directors to sit in the board. At the same time, the choice to not have a minority director sitting in the management board would be acceptable, were this board regulated and organized according to the German conception of an office composed exclusively by executive members. But in our system the law on one hand provides, as mentioned, for an independent member to sit in the most crowded management boards; on the other it freezes the supervisory board by making of it a body where majority shareholders and their representatives can reserve themselves high level management duties and the supervision of the executive body, thus paving the way to a shift of the executive function towards the management board. And it is not by chance that the first applications of the two-tier system seem to confirm this “open” configuration of the management board (as in the case of Intesa San Paolo bank: Table 4).

A parallelism becomes then unavoidable between the management board and the board of directors of the one-tier system, though the first lacks a minority director and has at most one independent member. As for the supervisory board, it appears more and more akin to the board of auditors, with which it shares the same independence requirements, the same supervisory duties and the same powers; but it can end up competing with the management board in the exercise of some important managerial functions, if the by-laws do not clearly specify the respective competences and roles, when attributing such powers.

It is also to be kept in mind that in the two-tier system the supervisory board's chairman shall not be elected by the minority, differently from what happens for the chairman of the board of auditors. This is probably due to the fact that, not only all of its members shall be independent, but most of all because of the powers (comparable to those of the general meeting and) of high management accorded to it by the law or accordable by the by-laws, which make it inappropriate for it to be chaired by the sole member, though independent, elected by the minority.

Overall, the choices made by the latest laws, very significant in terms of governance, do not appear to be reasoned enough, neither from a systematic point of view, nor, simply, from a practical point of view. Moreover they give ground to serious concerns, expressed by many, of an unwanted "normative arbitrage" among the different models, identifying the less favourable in the minorities' regards.

8. The last two important particularities of the legal organizational statute of public companies regards documents and audit control.

The law on savings, as did the decree n. 231/2001 on administrative liability of bodies before, regulated the management controls that shall be attributed to internal entities, providing the creation of a financial officer in charge of drawing up the annual accounts and other accounting documents, with the aim of increasing the investors' protection.

The law basically entrusts the manager of a series of organizational, control and warranty duties in the field of the company's accounting documents. Among these duties of particular relevance is the statement, to be released by the manager together with the managing directors, of correspondence between the annual accounts (and, where required, of the consolidated balance sheet) and the outcomes of accounting records and, as added by the amending decree, of their attitude to fairly and correctly represent the economical and financial condition of the issuer and of all the consolidated subsidiaries.

Still to be verified is the relationship between costs (in terms of administrative application) and benefits (in terms of investors' protection) and the real utility of the new provision, which rather appears as an automatic reaction of our legislator to Sec. 302 of Sox and of its implementing regulation enacted by SEC.

As for the auditing, issuers (as well as companies with significantly spread securities) shall appoint, as well known, an auditing firm, instead of a single auditor.

It is of common knowledge that the relevance accorded by all advanced legal systems to the auditing firms, meant to be the principal means of protection of investors, is of fundamental importance. Equally well known are the results, often deceiving, which emerge from internal and international financial scandals.

The law on savings has, from many points of view, increased the independence rules applicable to the auditing firms, both by prohibiting them to provide services other than auditing, and by including in the prohibition the whole subsidiaries' network. The law has also increased the public oversight on auditing firms and modified, in a very (I shall say) balanced way, its way of selection (and removal), by attributing a proposing function to the board of auditors and by broadening Consob's powers in evaluating the organizational structure of the firms and in intervening automatically in case of general meetings' inertia.

To this regard it is worth pointing out the vast reference made by the new law to the regulation, supervisory and sanctionatory duties of Consob, that makes the relevant applicable regulation more and more layered and difficult, and that excessively expanded the public regulation and intervention.

Furthermore, the problem of the excessively long term of appointment has yet to be solved, and practically, the nine-year amendment brought no significant changes, though rendering it more stable than the previous three-year term with the two possible renewals. Still, there is, anyway, the news of the mandatory rotation of the responsible shareholder after six years, inherited from the North American experience and anticipating the European Directive, slightly less strict (rotation after seven years).

9. An important part of the binding rules hereby analyzed is to be agreed with.

It is almost obvious to underline how it would be preferable for the listed companies themselves to issue rules like this, eventually by better shaping common best practice principles. But our code of ethics does not include similar provisions, except for a few, even without considering the problem of adhering to the code and of being bound to its most "uncomfortable" provisions, that shall be hopefully overcome in our system by the adoption of the "comply or explain" principle, which implies an attentive and mature kind of market. Moreover, the majority of Italian issuers does not seem to have introduced the minority director, who is on the contrary present in only about 10% of the cases (Assonime figures 2007), nor does it seem to have widened the independent auditors' or directors' powers, nor to have provided with strict by-laws on auditing and so on without being bound by law.

It is worth, in this regard, to point out the phenomenon of concentration of both chairman and CEO offices in the same person, which takes place – according to Assonime (2007) – in more than three fifths (61%) of our issuers. The plurality of offices prevents the exercise of essential duties of the chairman as a counterweight to the executive directors, as a permanent supervisor of the management and as a fundamental element in the information spreading.

Notwithstanding the international best practice recommendations (in UK the Higgs Report and the Smith Report, both of 2003), the Italian code (even in its latest version, to this regard better than the previous one) only establishes the principle according to which "*it is better that the same person not have a plurality of offices*" (2.P.4); but it is not forbidden, since, as well clarified in the relative comment, it is to be bore in mind that it can be preferable "*especially in the case of smaller issuers, considered their appreciable operational needs*". The relevant application criteria (2.C.3) therefore only provides that for the case of concentration of different offices in the same person an independent director shall be appointed as lead independent director (present only in 18% of listed companies: Assonime, 2007) "*meant to be a point of reference and of coordination of the requests and contributions of non executive directors, especially the independent ones*".

It is then clear that when effective rules cannot be issued on a voluntary basis, it shall then be the law to intervene in a mandatory way.

And this is what happened, not with regard to the concentration of offices but in a more general perspective, with the law on savings, through which the way of binding public rules, also in fields that abroad are left to self regulation, was again chosen.

I think we are all aware of the fact that thus behaving there is the risk of isolating our legal system on the international stage and of imprisoning Italian companies in an exceedingly strict net of rules. The recent increasing attention of the entrepreneurs towards market disclosure and a modern governance commonly wanted and agreed upon, rather than externally imposed and reluctantly accepted, must be acknowledged.

But when the reactions from private freedom and from self-regulations do not come or do not come with the required effectiveness, the market does not adequately penalize the non diligent companies on its own, scandals then shake the investors' confidence, therefore the solution of public regulation becomes the only viable one.

The intervention of the law and of binding rules in the field of companies' organization shall anyway always be cautiously measured and mandatory solutions shall always be well pondered and regulated.

To this regard the law on savings, even after the amending decree, does not appear as the best reaction, due to an exceeding public intervention, to a doubtful effectiveness of some of its solutions, and to the useless duplication of duties and obligations that it did not rectify or, on the contrary, increase.

It also disregarded means of private enforcement and, in particular, liability claims: the new law actually only provided in terms of lowering from 5 to 2,5% the threshold required for the minority action entitlement (art. 2393-*bis*, 2nd par., civil code), unless otherwise provided by the by-laws, and avoiding to introduce the class actions (at present meant to be included in a different and questionable law, still on standby and undergoing a revision process, as a general means of compensation for damaged consumers). It goes without saying that these would in any case be only apparent solutions if not made effective by a judiciary system ensuring a reasonable duration time at all the levels of civil proceedings and by judges with deep knowledge of corporate and financial matters.

To a certain degree, then, the old and the new public regulation also represent an unjustified burden for Italian public companies, even considering the ordinary weight inevitably represented by any system of rules, even if reduced as much as possible, technically perfect and coming out of voluntarily written and subscribed codes.

It is still to be stated that the organizational provisions of TUF, with the amendments introduced by the law on savings, seem to be necessary rules, though simplifications and improvements still are desirable. They are rules capable of giving their contribution towards a more modern business culture, that in any case many issuers are already showing they feel as theirs, but that needs to be developed and spread.

A new business culture that may represent a strong asset for our companies and for the production of value for their shareholders.

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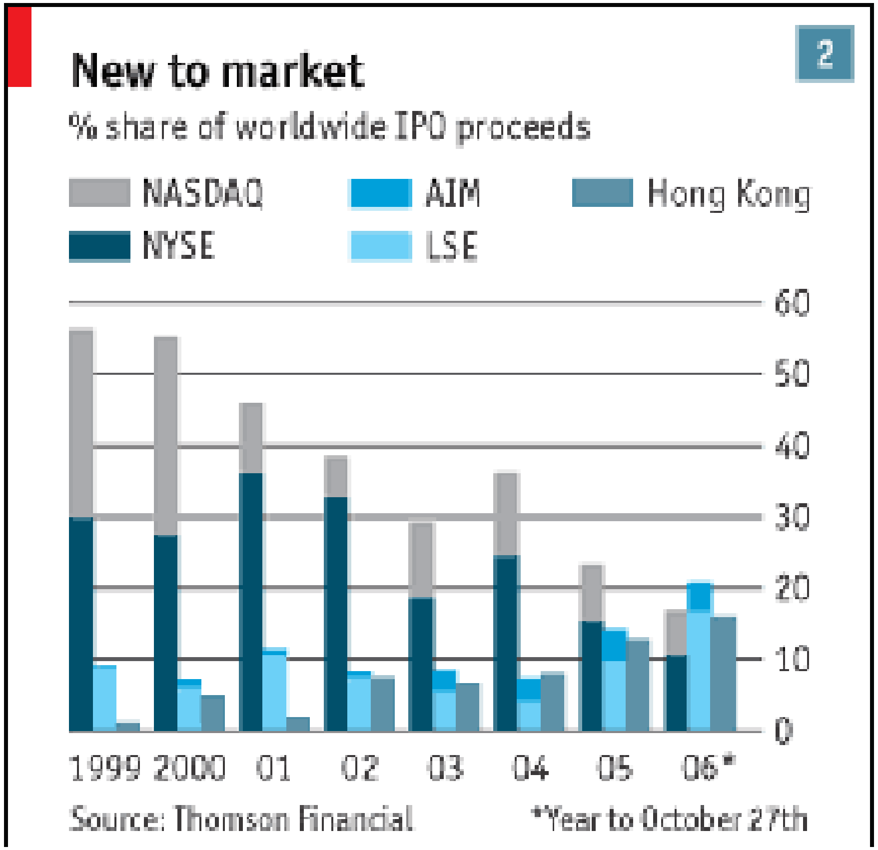
Table 1 - Number of diffused shares companies (data updated on july, 1 2006)

	Total number	Financial industry	Manufacturing industry	Services industry
Mutual companies	**29**	28 (credit unions)	-	1
Companies	**54**	41 (37 banks, 4 insurances)	5	8
Total	**83**	69	5	9

Our processing of Consob data

Figure 1 - New IPOs

Percentage share of IPOs in the main international stock markets



The Economist, november 2006

Table 2 - Delisting Wall Street

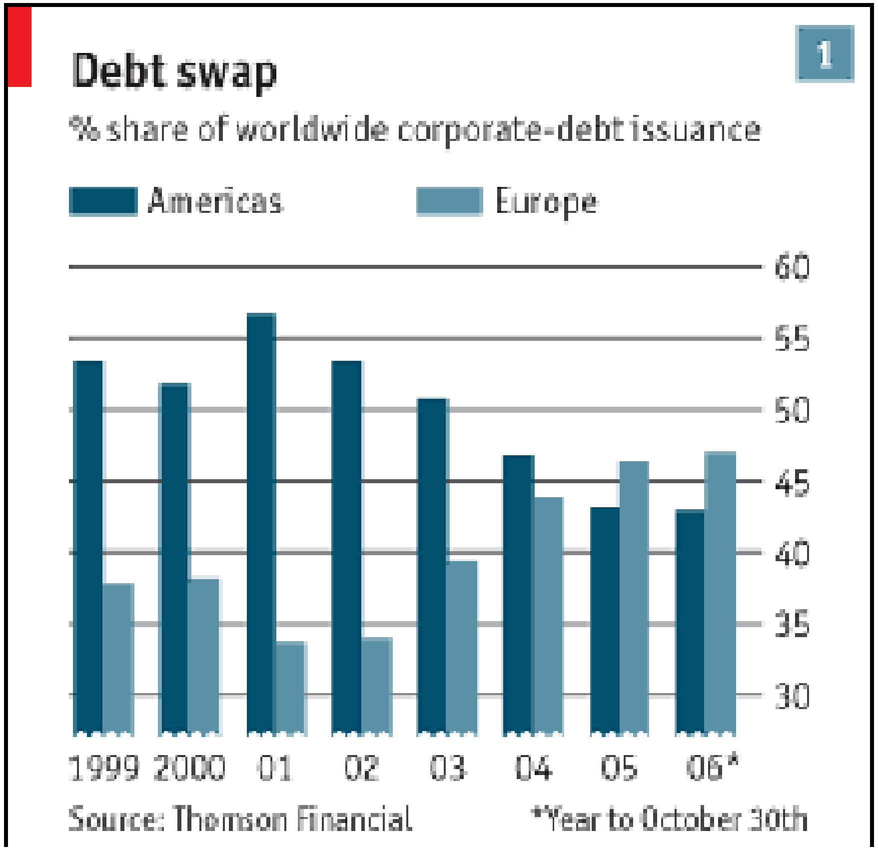
Year	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**Total 1998 2004**
Delisted companies (*going private*)	23	54	72	81	61	79	66	436

Year	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**Total 1998 2004**
Companies mantaining OTC transactions (*going dark*)	28	29	14	43	65	183	122	484

(Leuz C., Triantis A. J., Wang T. Y., 2006)

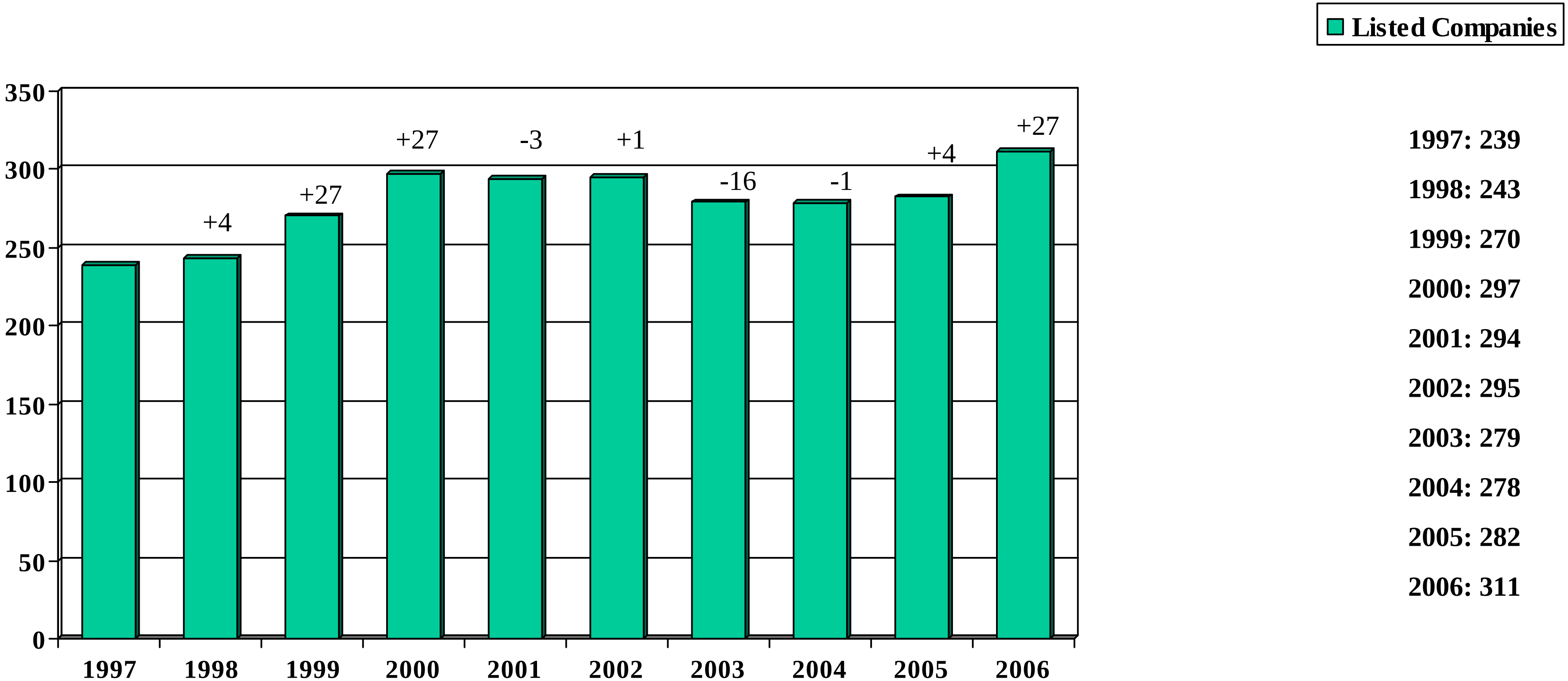
Figure 2 - Debt Issuance

Percentage share of corporate debt issuance



The Economist, november 2006

Figure 3 - Number of listed companies in the Italian Stock Exchange



Our processing of Borsa Italiana s.p.a. data

Table 3 - 2005 breakdown of ENI shareholders' interest

Shareholders	Number of shareholders	Number of shares	Interest % of total stock
>10%	1	813.443.277	20,31
3%-10%	3	680.861.792	17,00
2%-3%			
1%-2%	7	406.360.994	10,15
0,5%-1%	9	271.287.295	6,77
0,3%-0,5%	14	208.487.474	5,21
0,1%-0,3%	44	300.548.130	7,51
≤ 0,1%	269.371	948.718.920	23,69
Own shares		244.488.113	6,11
Other	n.d.	130.263.881	3,25
Total	**269.449**	**4.004.459.876**	**100,00**

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Table 4 - Intesa San Paolo S.p.A. – Articles of Association

Article 13. Management Board.

13.1. Composition. The management of the Company is exercised by the Management Board, composed of a minimum of 7 (seven) and a maximum of 11 (eleven) members, including non shareholders, appointed by the Supervisory Board, which determines their number at the time of appointment.

(*omissis*)

Article 19. Managing Director.

19.1. The Management Board, upon the indication of the Supervisory Board, appoints among its members a Managing Director with the qualified majority provided for by article 16.5.

(*omissis*)

Article 22. Supervisory Board.

22.1. Composition. The Supervisory Board is composed of a minimum of 15 (fifteen) and a maximum of 21 (twenty one) members, including non shareholders, appointed by the Shareholders' Meeting.

(*omissis*)