

Luiss Guido Carli
Dottorato di ricerca in Diritto degli Affari – xx ciclo
dottorando: Duccio Ruben Ducci

Tesi di dottorato:

Company directors' misappropriation of *corporate opportunities*. Case law testing and definitional issue.

ABSTRACT

Corporate opportunities doctrine belongs fully to theory of agency costs involved in relationship between managers and owners. As such it is a common issue to corporations in developed economy countries. Italian legislator dwelt upon the issue in 2003 enacting a substantially incomplete norm which provides that a given conduct is proscribed and give raise to responsibility of unloyal manager. On the other hand, it is not provided what is a “corporate opportunity”, nor whether misappropriation may be authorized by corporation and, in case, upon which provision. The issue is common to all countries with similar corporate law structures, thus it is bound to look at those countries in which rules have formed through constant evolution in jurisprudence and doctrine. The amendment of art. 2391 italian civil code with a new last paragraph may look, like others, as a legal transplant, namely an artificial translation that is not consistent with surrounding context. Prior to analyze the aforementioned norm in the italian normative system given its peculiarities, it is necessary to pay attention to bases of corporate opportunities doctrine in order, if possible, to enlighten them. This analysis is largely common to most legal systems regardless of optimal regulation's enforcement level.

The present work is intended to give a contribution to define what a *corporate opportunity* is, a notion interely new to italian legal system. In fact, definition, is the key issue in corporate opportunity doctrine as well as, under many facets, the most uncertain. The core point is definition of *corporate opportunity*, where “corporate” stands for “belonging to corporation”, that is, a relationship based on entitlement of property rights. Given this purpose, a critical analysis of main jurisprudential tests adopted in the U.S. will be undertaken, with the aim to find a common denominator which may direct in judgement. In this process particular attention has been paid to theories underlying various tests, provided that definition of corporate opportunity is largely a consequence of general theory of relationship between owners and managers. Finally, some conclusions will be drawn upon translation paths of corporate opportunity doctrine into italian legal system, in particular with reference to directors' self dealing regulation.