

Abstract

Why a private matter, which is the s.p.a., should be compulsorily subjected to the control of a third party, to the so-called external control?

In order to properly answer to this question it is necessary to analyze the interests involved in the "life" of a corporation. In other words, if any irregularities in the governance, reporting, accounting have only harmful effects with respect to those persons who participating in that private business, there will be no reason for a mandatory control that would only affect those who decide themselves to risk in that private business. In that case, we could say that the external control, and in particular the accounting control entrusted to the external auditor, should not be mandatory, but it should be quite a free choice of the company, to be made at the time of incorporation or in the course of the life of the company.

After a closer look, however, the interests involved in the life of a company are also the interests of creditors and of third parties that have to choose whether to entertain business relationships with that company.

In order to allow the shareholders, creditors and third parties to rely on the accuracy of the data of the company, the lawmaker, over the years, has chosen to oblige the company to appoint an external person (or entity) who, on his own liability, makes a judgment on the regular bookkeeping. So if the auditor should make a positive opinion, without remark, the third would have the assurance that the company's accounting data are true, correct and clear and, ultimately, for him reliable.

Historically, the audit has shown a substantial inefficiency, such as to determine, or, in any case aggravate the crisis that in recent decades have affected the market.

In general, the activity of the auditor is to:

- *checkout, at least quarterly, the regular bookkeeping and correct recording process;*
- *verify the fairness of the financial statements.*

The goal of our research is to understand if the external control system is currently an effective control or if it is a mere formal control, with no real effect and therefore devoid of any avail. At most, it is likely to be source of an increase in bureaucracy and costs for the company.

Following the historical setting, we focused our attention, in particular, on the statutory audit, as mandatory external control, set up in the 70s in the light of the failure of the efficiency of the internal control board.

We quickly examined the US regulations and the different theories on liability of gatekeepers expressed by overseas doctrine and jurisprudence.

In particular, we place our attention to the legislative changes that have affected particularly the revision, in order to understand if the desired simplification of controls is actually been achieved and whether these legislative changes permit – i.e. oblige - effective control.

To our question, maybe we have to answer in the most disappointing way: the external control system, as outlined in our regulation, is ineffective. The lawmaker seems influenced by different interests, thus providing a discipline of compromise between those interests. Once again, then, searching the inspiring principles of the law reform, we will investigate the "interests inspirers".