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Governance Innovation and Enhancement: The New One-Tier Model of UBI Banca

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Abstract

On the basis of their experience and capitalism model, every country has developed different systems of corporate governance. For many years, in various European countries, there were debates on the opportunities and methods of harmonising European company law; in Italy, one of the most important change was the possibility for limited companies to choose between three management and supervision models: the Italian traditional model, the two-tier model (of German origin), and the one-tier model (of Anglo-Saxon origin). In our study we analyse one-tier and two-tier systems, first theoretically and legislatively and theirs application in Italian quoted companies 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 operation. We illustrate an important case in depth, namely the governance system at UBI Banca as a phenomenological case. Main study's objective is to analyse transition of UBI Banca from the two-tier model (2007) to the one-tier model (2018), identifying the main causes and reasons for this choice.

Keywords: corporate governance, dualistic, monistic, two-tier system, one-tier system, Italian traditional system, bank, UBI Banca, board of directors

1. Introduction

Every country, on the basis of their experience and model of capitalism, has developed different systems of corporate governance (Charkham, 1994; Nobolo, 2005; Magli and 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, the management team is bound by a relationship of trust with the shareholders who 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 given equal consideration.

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

The first of the two systems described above is usually defined as a monistic or one-tier system (characterized by one body) and the second as a dualistic or two-tier system.

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

One of the most important features introduced with company law reform in Italy (Legislative Decree No. 37 of 6 February 2004) is represented by the ability of limited companies to choose between three management and supervision models: the traditional Italian model, the two-tier model (of German origin), and the one-tier model (of Anglo-Saxon origin).

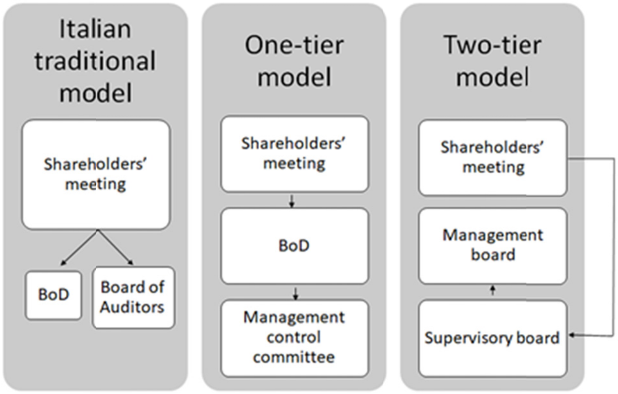

Figure 1. Corporate governance models

In our study, we analyse two-tier and one-tier systems and their application in Italian quoted companies, especially in the banking sector. We will examine the reasons why these companies have chosen these types of management and supervision model, illustrating an important case in depth, namely the governance system at UBI Banca. Our study is organised as follow: section 2 and 3 present the characteristics of two-tier and one-tier systems; section 4 shows the methodology, section 5 shows the governance system in Italian limited company banks and in the section 6 there is the analysis of main changes in their governance. Section 7 analyses an important case in depth, namely the governance system at UBI Banca as a phenomenological case and in the final section the conclusions. Main study's objective is to analyse transition of UBI Banca from the two-tier model (2007) to the one-tier model (2018), identifying the main causes and reasons for this choice.

2. The Two-Tier System

The two-tier system (Note 1) was established in Germany, where it constitutes the only legally allowable management and control system for limited companies. This model was introduced at the end of the nineteenth century, following the removal of the need for state authorization to set up commercial companies, with the aim of putting an end to some financial scandals that arose in that period. It was then adopted by other European countries such as Austria, Denmark, Sweden, Finland, Norway, and the Netherlands, in addition to Japan and China, with some variations in the system.

Other countries characterized by the so-called 'Latin' capitalist system have the two-tier system operating alongside other systems, giving companies the power to choose their governance structure. One such country is Italy (Magli, 2011).

Indeed, since the reform of company law in Italy, which took place in 2003, limited companies in Italy also have had the power to choose between three corporate governance models, one of which is the two-tier model.

The Italian two-tier system is regulated by Articles 2409-octies to 2409-quinquiesdecies of the Civil Code.

Because of the increased statutory autonomy granted by the aforementioned reform, the articles stipulate that the management and oversight of the company must be performed, as illustrated in Fig. 1, by:

- a management board;
- a supervisory board.

Only the management board, which takes the place of the traditional Board of Directors (BoD), manages the company. To this purpose, it performs the necessary operations to carry out company business.

The management board can delegate some of its powers to one or more of its members. It must comprise a minimum of two members and, with the exception of the initial members, who are appointed at the time of its establishment; their appointment is the responsibility of the supervisory board, which determines how many there should be in the limits established by the company's statute.

Members of the management board can stay in their role for three financial years, can be re-elected, and can be removed at any time by the same supervisory board, with the right to compensation if their removal has been without just cause.

To validate management board decisions, the presence of the majority of board members in office is necessary, except where the statute requires a greater number present.

Decisions are taken by an absolute majority of those present, except where the statute stipulates otherwise.

The main differences from the German two-tier system concern:

- the composition and number of directors on the management board;
- the appointment of the management board.

In Italy the number of the management board members, as the BoD members, of the medium-large companies is determined by the statute whereas under German law, in contrast, the management board can comprise just one member.

Furthermore, under the German system the management board, to which the management of the company is assigned in its entirety, only comprises executive directors unlike directors who make up an Italian management board, where many members are independent directors.

Another important difference concerns the appointment of the management board by the supervisory board. Under German legislation, this appointment does not exclude the possibility of shareholders tabling a vote of no confidence against the management board, leading to its removal, a situation that strengthens the direct relationship of trust between shareholders and managers.

In the Italian two-tier system, shareholders cannot act directly against directors, given that the shareholders' meeting cannot remove them or vote no confidence.

The Italian supervisory board incorporates the responsibilities of the board of auditors in the traditional system, and some tasks of the shareholders' meeting of Italian traditional systems. It comprises a minimum of three members. With the exception of the initial members, who are appointed at the time of its establishment; their appointment is the responsibility of the shareholders' meeting, which determines how many there should be in the limits established by the company's statute.

They hold the position for three financial years and can be re-elected. At least one member of the supervisory board must be someone listed in the register of auditors at the Ministry of Justice.

The main differences from the German two-tier system concern:

- the type of control exercised by the supervisory board;
- the supervisory board's financial scope.

Under the German two-tier system, the supervisory board has substantive management control, whereas in the Italian system, in addition to monitoring compliance issues (typically, a task of the board of statutory auditors), they only have the power to (Panzironi, 2007):

- appoint and remove the management board;
- approve the balance sheet;
- take management actions regarding the management board in conjunction with the shareholders' meeting.

Accordingly, under the Italian two-tier system, the supervisory board is akin to a board of auditors that has been granted the main powers of the shareholders' meeting. Unlike the board of auditors in the Italian traditional system, though, this body is not in the position of a third subject. Indeed, the supervisory board appoints the management team that it monitors, approves the balance sheet of the company, audits and is removable by the shareholders' meeting of the company.

Companies that use this model rather than the traditional model allow majority shareholders to reduce the power of minority shareholders in the shareholders' meeting, given that the latter are excluded from decisions, which, in the traditional system, are taken by all present at the shareholders' meeting.

Another important divergence from the German-based system concerns the financial scope of the supervisory board. The Italian supervisory board supervises the activities of the management board, whereas the Aufsichtsrat (German supervisory board) was created to also carry out a social justice role, in accordance with German legislation.

In Italy, in 2009 there were 153 limited companies implementing the two-tier system as a governance model (Casiraghi, Negri Clementi and Schwizer, 2009).

Only 5% of the 153 were represented by limited companies quoted on the stock market, whereas 50% involved banking enterprises (Deutsche Bank, Banca Intesa San Paolo, UBI Banca and Banco Popolare). In light of that fact, it seems that the two-tier system has found particular favour in the financial sector, especially banking.

More recently, other large companies have joined two-tier governance, such as Ferrero, starting from 1 September 2017.

Others that had two-tier governance have, however, changed back, like A2A, which now adopts a traditional system as well as all the banking/banking groups previously considered, namely:

- Banco BPM which went from the two-tier to the Italian traditional system;
- Intesa San Paolo and UBI Banca, which have switched from two-tier to one-tier system.

Even Mediobanca has reverted from two-tier to Italian traditional system.

3. The One-Tier System

The corporate governance system adopted in the Anglo-Saxon model is the monistic or one-tier system (Note 2). This system is so called because it provides for the presence of only one body, the board of directors (BoD), which appoints the internal control committee. The one-tier model in Italy is regulated by Articles 2409 sexiesdecies to 2409 noviesdecies c.c.

At least one third of the members of the BoD must meet the independence requirements laid down for the statutory auditors by the subsection No. 1 of Article 2399 c.c. that is, they must not be:

- those who find themselves in the conditions foreseen by article 2382;
- the spouse, or relative and cognate within the fourth degree of kinship to company directors;
- those who are related to the company or to the companies controlled by it or to the companies that control it or subject to joint control by an employment relationship or by an ongoing consultancy relationship or paid work, or by other property relations that compromise independence.

Unless otherwise determined by the statute, it is the responsibility of the BoD to determine the number of and appoint the members of the management control committee. In companies that use the venture capital market, the committee cannot consist of fewer than three members. The management control committee is composed exclusively of directors who meet the aforementioned independence requirements, who are not members of the executive committee and to whom no proxies or particular duties have been assigned, and who, in any case, do not take on functions related to the management of the company or companies that control it or are controlled by it.

In this model, the management and supervision of the company are performed by the:

– BoD;

– management control committee.

The only substantial difference between the one-tier and the Italian traditional model is the absence in the first of the board of statutory auditors, replaced by a management control committee appointed by the BoD within it.

The functions covered by the management control committee are attributable to those otherwise delegated to the board of statutory auditors and can be summarised as supervision of the appropriateness of the organisational structure, of the internal control systems, and of the administrative and accounting apparatus.

In order to avoid potential conflicts of interest deriving from the substantial coincidence between the two bodies (BoD and management control committee), members of the committee have imposed on them the same requirements of honourableness, professionalism and independence required of auditors.

The adoption of this model simplifies the circulation and exchange of information since the two management and control bodies are closely connected; this simplification generally leads to savings in terms of both time and costs, as long as it does not affect the effectiveness of the control over the executive body.

In 2014, the joint-stock companies that in Italy had chosen the one-tier system were 264 (of which about half were located in the provinces of Milan [36], Trento [41], and Bolzano [37]). In general, out of the approximately 46,000 large companies in Italy, the alternative models (two-tier and one-tier models) are chosen in less than 1 per cent of cases (Associazione nazionale avvocati italiani - National Association of Italian Lawyers, 2015).

4. Methodology

The study focuses on the use of this two different corporate governance methodologies introduced after 2003 in Italy, particularly in the banking sector. After a first excursus on the merger processes of small and medium-sized banks in large and international banks, the study focused on the governance system of the three completely Italian banks that resulted from these mergers, namely Intesa San Paolo, Banco Popolare, Ubi Banca and on Mediobanca which also changed its governance system in just a few years.

After this preliminary analysis, studied in paragraph 5, we focused on a specific case study: Ubi Banca.

This study used a case study analysis (Stake, 1995, Yin, 2014) because the essence of a case study is that it tries to illuminate a decision or a set of decisions: why they were taken, how they were implemented, and with what results (Schramm, 1971).The case study has been a common research method in political science, business, economics and education (Yin, 2014:4) and is a good methodology in qualitative studies and in particular in phenomenological research (Creswell, 2014:14) like this.

The fundamental goal of the approach is to arrive at a description of the nature of the particular phenomenon (Creswell, 2013); in this case the adoption of one-tier system. The phenomenon, which will be described in detail below, allows us to observe how some associations or some changes in regulations/laws can push society to use a particular model rather than others.

In the case study, the company's history, its governance, the main changes in the structure and in the governance system are analyzed. This information is obtained mainly from the newspapers of the time and from interviews conducted with the main players in the governance of UBI Banca.

5. The Governance System in Italian Limited Company Banks

Banking limited companies were created in Italy in the two-year period of 2006–2007, as a result of national amalgamations and mergers.

In Italy, the phenomenon of company mergers later spread to other sectors.

The process of amalgamation in the credit sector started in the 1990s to achieve some precise objectives, such as:

- to bring greater stability to the credit system;
- to improve the quality of the services offered;
- to participate in economic growth.

Some very detailed models for banking merger and acquisition have emerged and have been adopted in various countries, especially in Europe. The aim of these models is to identify long-standing cultural norms and traditions on account of which these mergers and acquisitions take place. On the one hand, there is the amalgamation and re-organisation model typical of countries such as Denmark, Sweden, and the Netherlands, where the banking sector is too fragmented and requires re-organisation to create new credit institutions that are larger. Then there is the model of expansion towards emerging countries, developed by Spain and Portugal, which aims to enhance relationships with some developing countries (especially Latin America). Finally, there is the generalised privatisation model, which entails the sale of some public-owned companies to private individuals, as implemented in some countries in the early 1990s, and in Italy in the banking sector, although rather later (Resti, 2006).

The main Italian mergers in the credit sector have created:

- Intesa San Paolo;
- Banco Popolare;
- UBI Banca;
- UniCredit (Note 3).

While the first three originated from Italian organisations, UniCredit took over a German bank in 2005 and then in 2010 merged it with some Italian banks.

In the first decade of the 2000s, the two-tier model, was chosen by the first three organisations (Intesa San Paolo, Banco Popolare, UBI Banca) and Mediobanca. In 2003, Mediobanca initiated a profound process of change that transformed it from a holding company to a banking group with highly specialised banking activities. Mediobanca was the first Italian company to adopt two-tier governance.

To build a banking corporate governance system is a complex task. Not only must the peculiarities of the company and its management and supervision system be considered; specific public requirements such as the protection of investors, in addition to the stability of the banking sector, must also be taken into account.

In general, one of the main advantages of adopting new corporate governance models in the banking environment lies in the enhanced development possibilities for the economy of our own country. Indeed, if an organisation uses a governance model similar to the tradition of one foreign country, it could make it easier to set up companies and banks in, or transfer them to, other countries and encounter fewer strategic and organisational difficulties in the process (Banca d'Italia – Bank of Italy, 2008).

One of the main criticisms levelled against the adoption of the two-tier system in banks as limited companies, however, concerned a purely technical aspect: 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), as the requirement for members appointed to administrative, management, and supervisory roles to be independent may not be met.

The new M&A procedures for Italian banks led to the definition of national banking organisations hubs which are increasingly focused on company expansion and on the integration of credit activities.

In the section 7 we will examine UBI Banca in greater detail. What follows is an analysis of the other three banks that have adopted the two-tier model, namely, Banco Popolare, Intesa San Paolo and Mediobanca.

5.1 Banco Popolare

The Banco Popolare was created as a group on 1 July 2007 from the merger between the Banco Popolare di Verona e Novara and the Banca Popolare Italiana. This banking group also developed a two-tier system of governance.

In particular, the supervisory board, comprising 20 members elected by the shareholders' meeting on the basis of lists that reflect precise territorial areas, has had the lawyer Carlo Fratta Pasini (Note 4) as its chairman since 2007, whereas the management board, headed by Vittorio Coda (Note 5), is made up of 12 members appointed by the supervisory board.

The separation between shareholders from the operational side, typical of the German system of governance, seems not to have been applied in Italy. For example, in the structure that governed the Banco Popolare, there were four non-executive directors on the management board, all representing the majority shareholders (Allegri, 2007).

The situation was even more complex at Intesa San Paolo. Here, among the 11 members of the executive board, there is only the Managing Director, Corrado Passera. The idea of a German-style management board, made up only of executive managers, has been lost completely. Moreover, unlike what usually happens in Germany, Passera, an executive director, was not the chair of the executive board, a position that was entrusted to Enrico Salza in 2006.

In reality, there is also a potential conflict of powers between the management board chairman and the supervisory board chairman. According to Statute, the management board chairman is responsible for relationships with supervisory authorities; the same task is the responsibility of the supervisory board chairman in the framework, according to statute, of auditing tasks that belong to the supervisory board.

5.2 Intesa San Paolo

One of the most important banking organisations is Intesa San Paolo, which is the result of the merger between Banca Intesa (ex Cariplo) and San Paolo Imi, a credit giant with six thousand bank counters. To maintain a balance between the responsibilities and powers of the pre-merger Banca Intesa in Milan and pre-merger Banca San Paolo in Turin, the two-tier model was adopted in 2006 (De Rosa, 2006).

The structure of Intesa San Paolo's two-tier governance system provided right from the outset for a supervisory board, headed by Giovanni Bazoli (chairman of Intesa), comprising 19 members appointed for the first three-year term (2007–2009) and confirmed for the 2010–2012 three-year period.

The only variation in this personnel concerned the vice chairmen appointed initially, Rodolfo Zich and Antoine Bernheim, who today are not present even as members of the supervisory board.

The management board, meanwhile, consisted of 11 members in 2006, but currently comprises 9 members, appointed by the supervisory board. This board was headed by Enrico Salza in 2006 (chairman of the Istituto San

Paolo di Torino) and then by Andrea Beltratti (Note 6), in order to maintain the traditional geographical Turin/Milan dualism through people who respectively embody the identity of those two cities.

5.3 Mediobanca

The Mediobanca case deserves particular attention. This is a financial institution which adopted the two-tier model and then abandoned it to go back to the Italian traditional model. For the adoption of the two-tier system, the use of two different and important bodies as supervisory board and management board was necessary for 'a governance system more in keeping with the shareholding structure at Mediobanca, and its operational requirements, and would support the growing presence of the Group on international markets more effectively' (Note 7).

Mediobanca opted for a model that included a supervisory board, made up of a minimum of 11 to a maximum of 21 members (with at least four of them being independent and two representing minority shareholders). The 21 members forming the supervisory board were split as follows: 7 for the banks, 8 for industry, 4 for foreign shareholders, 2 for others (the Zunino (Note 8) list and institutional investors).

At the end of July 2008, after two months of meetings, discussions, and internal debates, at the suggestion of the supervisory board chairman, Mediobanca's shareholders' meeting voted unanimously to abandon the two-tier model.

The return to traditional governance was a joint decision by the management board and the shareholders' meeting because the two-tier system was considered well suited to transparency but too complex and confusing (Note 9), and because the management board was trying to find a model that could ensure sufficient autonomy for management and provide the company with stability.

6. Winds of Change in the Banking Governance System

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

The legislators believe that the one-tier model, like the two-tier 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 in international markets – where these models are better known – or are part of groups in which these organisational forms prevail. To safeguard the effectiveness and independence of the control body, the provisions establish that 'the statute of the banks that adopt the one-tier model' must also 'assign to the shareholders' meeting the task of appointing and removing members of the management control committee pursuant to the provisions of art. 2409-octiesdecies of the Italian Civil Code (c.c.)', requiring that the revocation must 'in any case be justified'.

6.1 Main Critical Issues Affecting the Two-Tier System and Transition to the One-Tier

The main problems encountered in the application of the two-tier model to banks concern the inefficiencies connected to the potential overlaps of roles in an internal control system consisting of a multiplicity of bodies, as declared by the president of Consob (Commissione nazionale per le società e la Borsa - National Commission for Companies and the Stock Exchange) at the annual meeting with the financial market of 5 May 2014 and later emphatically reiterated (Abriani, 2018).

For this reason, some banks have decided to change course and undertake one-tier governance. The reasons that led to this choice were first and foremost the request by the Consob's chiarman to experiment with a 'greater use of a more widespread system of administration and control at the international level'. In fact, the one-tier model, in addition to representing a governance model capable of making companies more competitive in international capital markets, could imply a particularly adequate and effective configuration of internal organisational structures for the management and control of listed companies, and therefore also of large banking groups. In addition, the European Banking Authority Guidelines on Internal Governance, which came into force on 1 July 2018, were built on the basis of the one-tier model, focusing attention on the monitoring of the board and enhancing the role of the board committees and independent directors. Moreover, EU Directive 2013/36 on the capital requirements of banks (the so-called CRD IV) and the most recent guide to the verification of the requirements of professionalism and integrity were published by the European Central Bank (ECB) in May 2018, while also taking into consideration the variant that is the two-tier system, takes the one-tier model of administration and control as its first point of reference.

Other factors that could reinforce the need to use a one-tier model are:

- the principal shareholders could be foreigners;
- the need for greater recognition abroad, especially outside Europe.

6.2 The New Governance System: The Four Main Italian Banking Groups

As we have already noted, the four main Italian banking groups have changed their governance system. Banco BPM and Mediobanca have switched from two-tier to traditional whereas Intesa San Paolo has changed from Italian traditional to one-tier, and UBI Banca has changed from two-tier to one-tier. Next we present a brief description of the development of each of the first three banking groups, while we will deal in detail with the case of UBI Banca, a bank that has abandoned the two-tier approach to adopt the one-tier, thereby ordering a major change in its governance.

6.2.1 Banco BPM (the merger of Banco Popolare and Banca Popolare di Milano)

The new governance system of the new company (Banco BPM instead of Banco Popolare) is a Italian traditional one.

The BoD consists of 15 directors, including non-shareholders a chairman, and a deputy vice president, appointed by the shareholders' meeting pursuant to the provisions of art. 20.8 of the Statute. The BoD must meet, as a rule, once a month and in any case whenever the chair of the BoD deems it necessary.

The board of statutory auditors is composed of five standing auditors and three alternative auditors, who remain in office for three financial years and whose term of office expires on the date of the shareholders' meeting called to approve the financial statements for the last year of their office. They may be re-elected. The statutory auditors must possess the requisite eligibility, independence, professionalism, and integrity established by the legislation currently in force.

6.2.2 MedioBanca

Mediobanca has changed its corporate governance system, moving from two-tier to Italian traditional model.

The BoD is composed of nine to 15 directors, two of whom are reserved for the minority shareholders list. Of the appointed directors, three must have been executives of the Mediobanca Banking Group for at least three years; at least two must possess the independence requirements in accordance with art. 148, third paragraph, of the TUF; and at least one third must also possess the independence requirements stipulated in art. 19 of the Statute that largely agree in substance with those of the Corporate Governance Code for listed companies. At least one third of the directors must belong to the gender list represented on the board. The BoD has set up three subcommittees within itself: the Risks Committee, the Remuneration Committee, and the Appointments Committee.

The board of statutory auditors is composed of three effective members and three alternative members, appointed on the basis of lists that must be filed at least 25 days before the date set for the shareholders' meeting together with the professional curriculum of the individual candidates.

6.2.3 Intesa San Paolo

Since 2016, Intesa San Paolo has changed its corporate governance system, moving from Italian traditional to one-tier model.

The one-tier model, adopted by Intesa Sanpaolo from 27 April 2016 onwards, combines, in practice, the positive simultaneous exercise of the strategic supervision function and the control function, which had already demonstrated its efficiency and effectiveness during the application of the previous two-tier system.

The BoD, aware of the size and organisational complexity of the bank and of the positive operating dynamics expressed by the administrative and control body over the last three years, assesses the total number of 19 directors – including therefore the five members of the committee for management control – as the optimal number for the future BoD. The current composition of the management control committee, additionally enriched by the experiences of its last term of office, is assessed as very good on the basis of articulation, quality, and methodological approach, under the triple profile: quantitative, business, and processes.

As part of our analysis, the most interesting bank is UBI Banca, which we will discuss in the next section.

7. The Case of UBI Banca

UBI Banca S.p.A. (Unione di Banche Italiane) is an Italian banking group of cooperative origin, created on 1 April 2007 from the merger between Banche Popolari Unite and Banca Lombarda. UBI Banca is based in

Bergamo and is the holding company of the banking group. The group is listed on the FTSE MIB index of the Milan Stock Exchange, and at 31 December 2018 had a market share of 6.7%. Following the decree-law adopted on 20 January 2015 by the Italian Council of Ministers, which requires cooperative banks (Banche popolari) with assets exceeding € 8 billion to transform from a cooperative company with shares into a joint-stock company, UBI Banca proceeded to comply with the new legislation on 10 October 2015.

UBI Banca SpA reorganized its corporate ownership structure and as a consequence it also changed its distribution network, transitioning from market coverage by means of seven network banks.

The group was formed from a network of local banks, which between 2016 and 2017 were merged by incorporation into the parent company UBI Banca.

The banks included in the network are:

- Banca Popolare di Bergamo S.p.A., based in Bergamo, with a presence mainly in Lombardy and Lazio (merged by incorporation on 19 February 2017 into UBI Banca S.p.A.);
- Banco di Brescia S.p.A., based in Brescia, with a presence in Lombardy, in Lazio, in Veneto and Friuli Venezia Giulia (merged by incorporation on 19 February 2017 into UBI Banca S.p.A.);
- Banca Popolare Commercio e Industria S.p.A., based in Milan, with a presence in Lombardy, in Emilia-Romagna and in Lazio (merged by incorporation on 21 November 2016 into UBI Banca S.p.A.);
- Banca Regionale Europea S.p.A., based in Turin, was mainly present in the north-west (merged by incorporation on 21 November 2016 into UBI Banca S.p.A.);
- Banca Popolare di Ancona, based in Jesi (Ancona), present in the Marche, in Emilia-Romagna, Umbria, Abruzzo, Molise, Campania and Lazio (merged by incorporation on 19 February 2017 into UBI Banca S.p.A.);
- Banca Carime, based in Cosenza, present in Puglia, Campania, Basilicata and Calabria (merged by incorporation on 19 February 2017 into UBI Banca S.p.A.);
- Banca di Valle Camonica, based in Breno (Brescia), present in Lombardy (merged by incorporation on 19 February 2017 into UBI Banca S.p.A.).

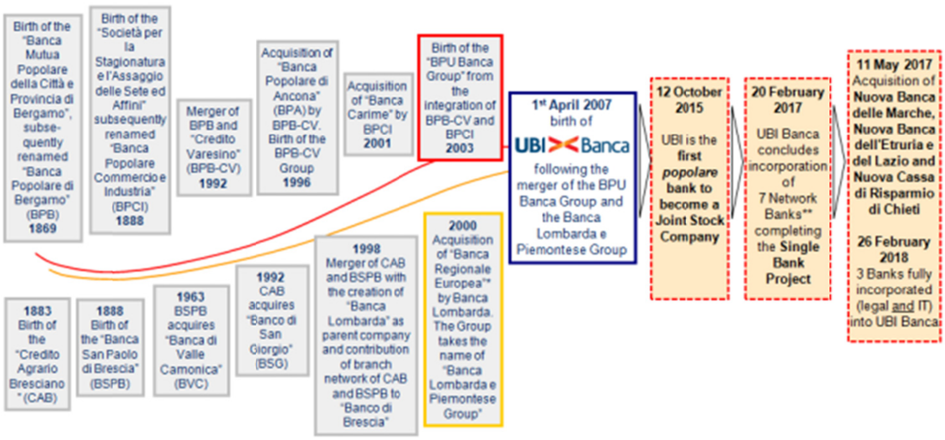

Figure 1. The UBI Banca history

Source: https://www.ubibanca.it/pagine/History-EN.aspx

Product companies operating in the financial and insurance sectors complete the range of products and services destined to Group customers, provided by the branch network, by advisors and agents and through digital channels (see figure 2).

The bank offers support to Italian companies that are also customers in foreign markets, ensuring the necessary financial assistance and a series of services to support the internationalisation of the business. The UBI Banca Group has also an International presence through foreign banks, foreign branches, representative offices and equity investments in foreign companies. There are branches in Cracow, Madrid, Munich, Nice, Menton, and Antibes. There are various representative offices in Casablanca, Dubai, Hong Kong, Moscow, Mumbai, New York, São Paulo, and Shanghai.

In the following figure, the new structure of the UBI Banca group is shown:

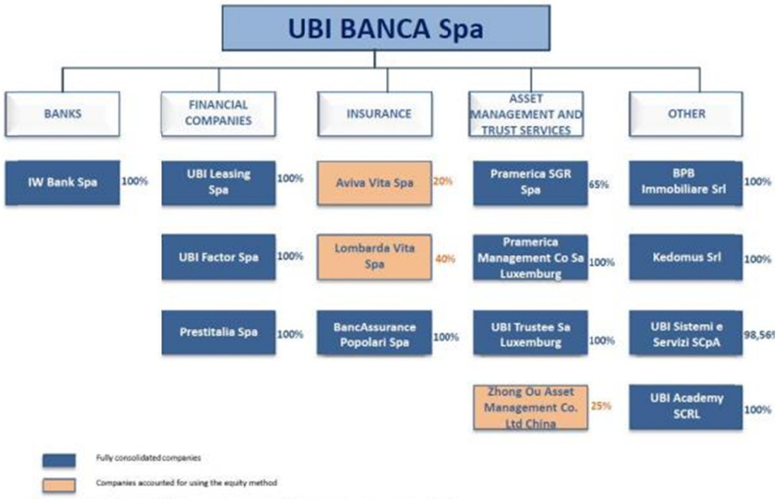

Figure 2. Consolidated companies in UBI Banca

Source: https://www.ubibanca.it/pagine/La-struttura-del-Gruppo-IT.aspx

In particular:

- IW Bank S.p.A. is an Italian online bank owned by UBI Banca. The bank characterises its offer for economic convenience and high technological content;
- in the financial companies: UBI Leasing Spa that includes leasing in real estate, vehicles, instrumental, nautical, power; UBI Factor Spa, factoring company and Prestitalia Spa, a finance company founded in 1998 that in a very short time has been able to carve out a leading role in the loan market, thanks to the high specialization on the products and the strong national roots;
- in Insurance: Lombarda Vita Spa, the insurance-bank with particular innovative products in particular for the Lombardy region; Aviva Vita Spa and BancaAssurance Popolari Spa, both similar to the previous ones;
- in asset management and trust services there are Pramerica SGR Spa, asset management company that offers a wide and diversified variety of investment solutions, dedicated to both private and institutional customers, Pramerica Management Co Sa Luxemburg, SICAV - investment company with variable capital based in Luxemburg and other companies in the international network as UBI Trustee Sa Luxemburg and Zhong Ou Asset management Co Ltd China;
- in others: BPB Immobiliare Srl, a real estate company; Kedomus Srl, real estate in the province of Bergamo; UBI systems and Services SCpA, computer hardware and software in technology sector and UBI Academy SCRL, the Corporate University of the UBI Banca Group.

7.1 The Governance of UBI Banca

UBI Banca (Note 10), established on 1 April 2007, has also introduced the two-tier system of corporate governance.

At that time, at UBI Banca the supervisory board was made up of 23 members who would be in office for a three-year period and whose election was list based. From 2007 to 2010, its make-up did not undergo changes; the chairman was Corrado Faissola (Note 11) and the vice chairman Giuseppe Calvi (Note 12).

The management board had 11 members. It was elected with a three-year term, by shareholders with the right to vote on the proposal of the election committee, which acted on behalf of the Supervisory board. At the end of 2010, UBI Banca had 15 members on the supervisory board and 7 on the management board. The president of the supervisory board was Moltrasio Andrea whereas Maria Letizia Brichetto Arnaboldi presided at the management board.

In 2017, UBI Banca started to change from the two-tier to the one-tier model. Since the end of 2017, in fact, UBI Banca had been thinking of a change of organisation in the name of greater efficiency and agility (Ferrando, 2017). The president of the supervisory board, Andrea Moltrasio, in fact, wanted to follow in the footsteps of Intesa San Paolo: to bid farewell to the two-tier system and plump for the one-tier model, with integration of the supervisory body within the BoD in the form of a control committee. The draft reform of the company statute was planned at the end of 2017, in order to proceed the following year with designating the top management team in the new configuration. The drafts provided for a further substantial reduction in the number of directors: in 2013, there were 32; by the end of 2017, there were 22 (15 in supervisory board and 7 in management board), while it was envisaged that in the future there would be 15 directors. In 2017, it was thought that at least five of these should have been part of the control committee: this would have been a key step, because in fact the directors in question would have had to take on the role of controllers and auditors at different times. One more reason to raise, even in accordance with the new stakes of the European Central Bank, the requirements of the directors, in terms of skills and independence. In September 2018, the ECB approved the new statute of UBI Banca.

The new re-organisation of UBI Banca was finalised in April 2019; it now comprises a BoD composed of 15 members (two thirds of whom are independent directors) within which there is a management control committee consisting of five members. Andrea Moltrasio, chairman of the outgoing supervisory board, was in charge of the change in the governance structure. According to Victor Massiah (the new CEO of UBI Banca), future development plans are to have a more efficient governance which is 'more recognisable' abroad and capable of maintaining 'a strong focus on the control function'(Davi, 2017).

In an interview with Il Sole 24 Ore (Davi, 2018a) , Andrea Moltrasio (chairman of the supervisory board at the time) explained why this change in governance was so fundamental, particularly given the bank's troubled history: 'When I became chairman, in 2013, UBI Banca was a cooperative bank based on a federal model and with a two-tier governance scheme. At the time the Bank of Italy invited us to assess whether that model was still suitable for the group that was created after the merger between BPU and Banca Lombarda, and from that moment on we set out on a path of modernisation that took us, in 2014, from the launch of the cooperative hybrid, and then from the public limited company law reform. In 2016, we envisaged the abandonment of the federal model and the merger of the seven banks: it was not an easy step, but we did it, and in 2017 completed the acquisition of the three so-called good banks. The governance reform is the last piece of this process, with a single bank that has become a public limited company, which today no longer needs a control filter between the company and the management body'.

According to Moltrasio, a slimmed-down board was needed, with more streamlined procedures (for example fewer meetings).

To the question why not return to a traditional system rather than change to a one-tier system, he answered: 'Starting from the fact that the management control committee will be made up of members of the BoD who, by participating directly in the taking of strategic decisions, will evaluate ex ante risks instead of ex post, as instead happens in the case of the board of statutory auditors envisaged by the traditional scheme. The internal committees will be more aligned with the board, the decision-making processes will be faster, and the role of the shareholders' meeting, which is responsible for approving the financial statements, and the role of minority directors will be enhanced. Not to mention that the one-tier is the most widespread system in the world: we are aligning ourselves with international best practices.'

One of the most interesting innovations concerns the new governance structure for the 2019–2022 period, which will be decided directly by the shareholders at the shareholders' meeting. Another very interesting aspect concerns the composition of the shareholders, who, according to Moltrasio, being the owners of the company, will have to propose the names of the directors of the management board. Shareholders are represented by (Davi, 2018b):

- a Brescia block, which holds about 15% of the capital (12.5% in the shareholders' agreement and the remainder outside the agreement). The Banca del Monte di Lombardia Foundation is a member of the 'Pact', with 3.95%, in addition to about 40 entrepreneurial families on the Brescia, Milan, and Pavia axis: among these the Gussalli Beretta stand out (with around 1%), Lucchini, Fidanza, Folonari, Strazzera, Bellini, Polotti, Bianchi, as well as Cattolica Assicurazioni;

- a block in Bergamo, represented by the Pact of a Thousand (Patto dei Mille) chaired by Matteo Zanetti, who can count on around 3% of the capital;

- a Piedmontese block, whose pivot is represented by the Cassa di Risparmio di Cuneo foundation (5.9%), chaired by Gian Domenico Genta.

Overall, the foundations and historical shareholders of the bank account for about 25 per cent of the capital: it cannot be ruled out that there are reasons around the idea of building a unit agreement so as to form that solid core that gives stability to a bank where today the investment funds (which do not want to have control over) hold the majority of the capital.

At the end of 2018, 264 shareholders of UBI Banca, with a total of 21.52% of the capital, reached an agreement about the names to be proposed for the new governance; the high-profile list includes directors Letizia Moratti (in the role of chair), Victor Massiah (CEO), Roberto Nicastro (vice chair), and Pietro Gussalli Beretta (representing the Brescia component). For the management control committee, the first director indicated in the list for the presidency, is the Brescia professional Alessandro Masetti Zannini (Davi, 2019).

8. Conclusion

The sudden change back to the one-tier governance system decided on by UBI Banca is undoubtedly symptomatic of an increasingly widespread rethink by companies that have adopted the two-tier system (see Banco BPM, Intesa San Paolo, Mediobanca, as discussed earlier). In the case of UBI Banca, after an initial phase of enthusiasm, the shareholders found themselves having to manage the difficulties inherent in applying the model and decided to change their governance system, changing over to a one-tier system, which is simpler and easier to create and implement.

The situation of UBI Banca seems, in some ways, similar to the situation of other banks that wanted to change governance, in that the conversion from one model to another is not primarily linked to management difficulties in implementing the two-tier model but instead is motivated by the difficulty of managing, without long delays and loss of time, and to satisfy the wishes of the 'main shareholders' in the ownership structure who significantly influence the management. These shareholders, as we have seen, are not the most representative in terms of percentage of ownership but in terms of connections with the territory and with interests related to it.

The previous model proved too complex and too cumbersome, due to the presence (initially) of 32 administrators and to the need to have an excessive number of meetings (up to 24 per year by, for example, the supervisory body). This led to the need to streamline the structure to accelerate the decision-making process and to meet the wishes of the partners, who wanted business continuity but not management and organisational complexity.

The main cultural consequences and consequently the political implications that we can derive from this case study are that the one-tier model allows:

- greater understanding on the part of foreign investors, which are increasing also due to globalization on Italian stock exchanges;
- greater simplicity of the governance model that contributes to:
    - greater social cohesion (between minority and majority shareholders);
    - greater rationalization of the control system (too complex in the other two systems);
    - a possible solution to the inefficiencies connected to the potential overlapping of roles of an internal control system consisting of a plurality of bodies;
    - greater clarity in identifying the members of the BoD, particularly in Italy, in order to overcome the embarrassment of the companies that have chosen to present the list of the BoD, but do not dare to do so because the board of statutory auditors (in the traditional model) should control it.

Furthermore, the fact that the controls must concern the entire corporate organization, including checks on the systems and procedures (information and administrative - accounting), on the various branches of activity (credit, finance, etc.), on the operations (introduction of new products, entry into new business areas or geographical, business continuity, outsourcing) emphasizes the importance of using an entity that best knows the strategic aspect of the business and is therefore within the BoD, i.e. the management control committee. This will also lead to a deeper and more understood risk control process since the members of the management control committee, also being in the BoD, will evaluate ex ante risks instead of ex post

References

Abriani, N. (2018). Banche e sistema monistico: l'ultimo sarà il primo? (Banks and one-tier system: will the last be the first?). *DB Community.* Retrieved from http://www.dirittobancario.it/approfondimenti/corporate-governance/banche-e-sistema-monistico-l-ultimo-sara-il-primo

Allegri, A. (2007). Il sistema duale, le promesse mancate (The dual system, the missed promises). *Il Giornale, Economia*, *15*.

Astori, R., & Bosetti, L.(2009). Crisi economica e modelli di corporate governance (Economic crisis and corporate governance models), *paper 97*, Università degli Studi di Brescia.

Banca, d'Italia (2006). Bank of Italy circular n. 263 of 27th December 2006, especially dispositions relating to "*La gestione e il controllo dei rischi. Ruolo degli organi aziendali*" (Risk management and control. Role of corporate bodies), in Title I, Chapter 1, Fourth part.

Banca, d'Italia. (2008a). Bank of Italy circular n. 264010 of 4th March 2008.

Banca, d'Italia. (2008b). Disposizioni di vigilanza in materia di organizzazione e governo societario delle banche (Supervisory provisions on the organization and corporate governance of banks), Credit and finance monitoring, general business, legislative, competition service, Standards division. *Paper W1*, N. 264010 of 4-03-2008, subclassification NO0004.

Banca, d'Italia. (2008c). paper n.62 September 2008 *Legal research papers of legal consultation* "Banche, governo societario e funzioni di vigilanza" (Banks, corporate governance and supervisory functions) by Renzo Costi and Francesco Vella.

Bolongaro, B. P. (2005). *Società e Bilancio* (Companies and financial statements). Il Sole 24 Ore editore, Milan, 2005.

Caravello, S. (2005). *La regolamentazione della corporate governance bancaria nelle direttive dei tre pilastri di Basilea (*The regulation of banking corporate governance in the directives of the three Basel pillars*)* passage from Tidona Giuridica–banking and finance knowledge. Retrieved from http://www.tidona.com/pubblicazioni/maggio05_3.htm

Charkham, J. (1994). *Keeping Good Company: A Study of Corporate Governance in Five Countries*. London: Oxford University Press.

Ciriello, S. (2006). Mercati finanziari più trasparenti – rafforzati sistemi di controllo e revisione nelle società quotate (More transparent financial markets-reinforced control and audit systems in listed companies). *Italia Oggi*.

Corporate Governance Committee. (2006). *Codice di autodisciplina delle società quotate* (Code of conduct for listed companies). Borsa Italiana Spa.

Creswell, J. W. (2014). *Research Design* (4th ed.). Thousand Oaks California, SAGE.

Davi, L. (2017). Ubi vara il riassetto della governance (Ubi launches the reorganization of governance). *Il Sole 24 Ore*, 13 dicembre 2017.

Davi, L. (2018a). Ubi più snella senza il duale – Ora parola ai soci per il rinnovo (Lighter Ubi without the dual - Now word to the partners for renewal). *Il Sole 24 Ore*, 19 settembre 2018.

Davi, L. (2018b). Ubi, l'assemblea dà l'addio al duale – I grandi soci alla prova del patto unico (Ubi, the assembly gives the farewell to the dual - the great partners to the test of the single pact). *Il Sole 24 Ore,* 20 ottobre 2018.

Davi, L. (2019). Una sola lista per Ubi Banca – Nessun nome da Assogestioni (One list for Ubi Banca - No name from Assogestioni). *Il sole 24 Ore*, 23 marzo 2019.

De Luca, N. (2001). *Il Consiglio di Sorveglianza: quale utilità per il governo delle società italiane*? (Supervisory Board: which is useful for the governance of Italian companies?). Associazione Disiano Preite for the study of company law, Università di Roma Tor Vergata, Rome.

De Rosa, F. (2006). Maxi fusione Intesa Sanpaolo. Decolla la prima banca italiana (Max Intesa Sanpaolo merger. The first Italian bank takes off). *Corriere della Sera*. Economia.

Di Toro, P. (2008). *Sistema dualistico e "declinazioni" del governo aziendale nel settore bancario* (Dualistic system and "declinations" of corporate governance in the banking sector).

Ferrando, M. (2017). Ubi cambia governance: pronto l'addio al duale (Ubi changes governance: goodbye to the dual is ready). *Il Sole 24 Ore*, 8th February 2008.

Graziani, A. (2008). Ubi Banca pronta a valutare opportunità di crescita (Ubi Banca ready to evaluate growth opportunities). *Il Sole 24 Ore*, 8th February 2008.

Grisoni, A. (2008). Banca d'Italia: la nuova governance delle banche (Bank of Italy: the new governance of banks). *AziendaBanca magazine*, 6th March 2008, editor Edipi.

Magli, F. (2011). *Proprietà, Governance e Performance* (Ownership, governance and performance).

Magli F., & Nobolo, A. (2006). Evolution of corporate governance control in manufacturing firms in *EIAC – Emerging Issues in International Accounting & Business Conference 2006*.

Monks Robert, A. G., & Minow, N. (2001). *Corporate Governance*, 2d Edition, Blackwell Publishing, 2001.

Nobolo, A. (2005). *Evoluzione del sindacato di governo economico nelle aziende di produzione* (Evolution of the board of auditors in economic governance in production companies), SISR Convention, 22nd-23rd September 2005.

Oriolo, C. M. (2008). Le criticità del sistema dualistico nella corporate governance (The critical points of the dualistic system in corporate governance). *Magistra magazine on Banking and Finance Law,* 25th February 2008, Tidona e Associati Legal practice.

Panara, M. (2010). Mediobanca, guerra d'indipendenza (Mediobanca, war of independence). 1th October 2010, Repubblica.

Panzironi, V. (2007). Il modello dualistico di amministrazione: aspetti critici (The dualistic model of administration: critical aspects), Magazine "Company Law and Practice" n.5/2007.

Quaglio, A. (2008). La Governance Bancaria che non piace a Draghi (The Bank Governance that Draghi does not like), *Il sole 24 Ore, Finanza & Mercati* of 28th February 2008.

Schramm, W. (1971). The Nature of Communication between Humans. In W. Schramm, & D. F. Roberts (Eds.), *The Process and Effects of Mass Communication* (pp. 3-516). Urbana, IL: University of Illinois Press.

Sciascia, M. (2008). Il nuovo regime di responsabilità degli amministratori di società (The new regime of liability of company directors).

Stake, R. E. (1995). *The art of case study research*. Thousand Oaks California, SAGE.

Szego, B. De Vincenzo, A., & Marano, G. (2008). *The evolution of corporate governance of Italian listed banks: what happened in the boardroom?*

Yin, R. K. (2014). *Case Study Research. Design and Methods* (5th ed.). Thousand Oaks California, Sage.

Zattoni, A., & Ravasi, D. (1998). Assetto proprietario, sistemi di governo e processi di decisione strategica nelle imprese con controllo di coalizione (Ownership structure, governance systems and strategic decision processes in coalition controlled companies). In Giuseppe Airoldi and Giancarlo Forestieri (Eds.), *Corporate governance*.

Notes

Note 1. or 'horizontally two-tier'.

Note 2. Called also Unitary or vertical dualism.

Note 3. From 1 November 2010, UniCredit Banca, UniCredit Banca di Roma, Banco di Sicilia, UniCredit Corporate Banking, UniCredit Private Banking, UniCredit Family Financing Bank, UniCredit Bancassurance were merged into Unicredit SpA. Previously UniCredit had taken over HVB, a German bank, on 24 November 2005.

Note 4. From 8 July 2004 chairman of Banche Popolari National Association, from 2008 Italian Banking Association Director and Member of the Honourable Committee of the National Association for the Study of Credit Problems.

Note 5. Full Professor of Strategy and Business Administration in Milan – Italy.

Note 6. The unanimity of choice of share institutions regarding Andrea Beltratti, a Bocconi University Professor from Turin, is seen as a rediscovered Milan/Turin understanding, passage by: Beltratti nominato presidente of Cdg di Intesa Sanpaolo in Il Sole 24 Ore – Finanza e mercati, 7 May 2010.

Note 7. Extract of minutes of Mediobanca BoD meeting on 23 May 2007. It should be remembered the two-tier model is the one better suited to institutions involved in merger operations and in this context we shouldn't forget the Unicredit-Capitalia operation. Website http://www.mediobanca.it/

Note 8. Luigi Zunino, Italian entrepreneur. In 2004 he acquired a Mediobanca share package and, therefore, a post on the supervisory board of the temple of Italian finance.

Note 9. The problem of 'confusion' was also raised regarding an incorrect translation of the original model in Italy that would have involved problems of interpretation and consequently correct application.

Note 10. Auletta, UBI Banca CEO explains, 'The two-tier system has, already, shown full validity and is particularly suited to banks. The monitoring of risks and supervision systems is particularly important in the banking sector and the division of tasks between management and supervisory boards has the effect of combining the optimisation of management efficiency with the strengthening of strategic and administrative monitoring. Not regular monitoring such as that of the assembly, but consistent during the financial year' section from: Alessandro Graziani, Ubi Banca pronta a valutare opportunità di crescita, Il Sole 24 Ore, 8 February 2008.

Note 11. Chairman of ABI (Associazione Bancaria Italiana) from 2006 until 31 May 2010.

Note 12. He was member of the board of Auditors at Banca Popolare di Bergamo until 1976 and in the same institution was member of the BoD with the position of vice chairman from 1985 to 2003. In addition he held the position of vice chairman at Banche Popolari Unite and was a member of the BoD at BPB Immobiliare srl.