

RIVISTA DELLE SOCIETÀ

INTERNATIONAL CONFERENCE
Rules for the Market and Market for Rules.
Corporate Law and the Role of the Legislature
NOVEMBER 13-14, 2015

Fondazione Giorgio Cini
Island of San Giorgio, Venice, Italy

The Conference for the sixtieth anniversary of the *Rivista* in 2015 focuses on two apparently distinct but related aspects of corporate law, and how they have evolved in the last few years.

On the one hand, we refer to the recent increase of contractual freedom and flexibility in corporate law in several jurisdictions, both in Europe and in the U.S., and the corresponding reduction of the role and scope of mandatory provisions vis-à-vis eligible ones. Examples of this trend, under Italian law but also in other systems, are the introduction of less rigid rules on legal capital and classes of shares, the elimination of limits concerning the issuance of bonds and debentures, the possibility to choose among different governance models, and optional rules on takeovers. This trend has affected not only substantive rules, but also procedural ones, for example with respect to the availability of arbitration to resolve internal corporate disputes. Of course, the increased flexibility has been partially compensated with the adoption of new mandatory protections of minority shareholders, investors and creditors, for example through a reform of appraisal rights, new rules on derivative actions or on equitable subordination of shareholders' loans, and specific liabilities of the controlling corporation in case of abuse of its controlling power. At this historical juncture, however, the direction, especially in Europe, is toward a greater reliance on private ordering.

The second aspect, which concerns primarily listed corporations and financial institutions, is the tendency of the legislature to attribute an increasingly relevant role to regulatory and enforcement powers of supervisory agencies (consider, in some jurisdictions, the regulation of transactions with related parties, rules concerning the composition of the board of directors, banks' capital requirements or rules of conduct of intermediaries). The increased regulatory and enforce-

ment powers of supervisory agencies might shift the balance away from private ordering.

These two partially conflicting trends are driven by different factors. Flexibility is partially the consequence of increased regulatory competition among jurisdictions: the “genius” of U.S. corporate law, especially starting in the late 1990s due to the jurisprudence of the European Court of Justice, has affected also Europe, even if of course in different and peculiar ways. Greater economic integration, the reduction of business barriers and a more intense cross-border legal dialogue have also facilitated the circulation of models and rules. Broader regulatory and enforcement powers attributed to independent agencies, on the other hand, are a response to the greater complexity of financial markets regulation, also considering the international dimension of finance, and in some cases also a response to the financial crisis or corporate scandals.

This evolution has lights and shadows, costs and benefits, and its evaluation should probably be nuanced and mixed. The above-mentioned trends, however, appear to be two of the most relevant features of the development of corporate law systems in the last few years, and allow framing the analysis of specific rules in a coherent theoretical perspective. The point of view adopted, in addition, emphasizes not only substantive rules, but also a public choice view on how these rules are adopted and amended. Last but not least, pursuant to an established tradition of the *Rivista*, the very transnational dimension of the phenomena considered requires a comparative and international approach.

The languages of the conference will be English and Italian. A simultaneous translation service, English-to-Italian and Italian-to-English, will be offered throughout the Conference.

PROGRAM

NOVEMBER 13, 2015

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10.00 am

Opening Remarks Alberto Crespi

Guido Rossi, *Regulatory Competition and Freedom of Contract in Corporate Law*

Klaus J. Hopt, *Directors' Duties and Shareholders' Rights in the European Union: Mandatory and/or Eligible Rules?*

Piergaetano Marchetti, *The Growing Role of Supervisory Agencies in Listed Corporations*

12:30 pm *lunch*

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2:30 pm

I. Comparative and International Perspectives

Chairperson Paolo Montalenti

Bruno Dondero, *Contractualism and Institutionalism in French Corporate Law*

Holger Fleischer, *Contractual Freedom and Corporate Law in Germany*

Eilís Ferran, *Contractual Freedom and Corporate Law in the United Kingdom*

4:00 pm *coffee break*

Angel Rojo, *Contractual Freedom and Corporate Law in Spain*

Luca Enriques, *European Corporate Law: Is it Harmonized?*

Marco Ventoruzzo, *Regulatory Competition and Freedom of Contract in U.S. Corporate Law*

David A. Skeel, *Federal Law and State Law Regulating Corporations in the U.S.*

NOVEMBER 14, 2015

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9:00 am

II. Corporate Law Institutes and Rules

Chairperson Mario Libertini

Marco S. Spolidoro, *The Partial Liberalization of the Legal Capital and Contributions Regimes*

Guido Ferrarini, *Freedom of Contract and Classes of Shares: One-share, One-vote?*

Lorenzo Stanghellini, *Bonds and Debentures: Flexibility in the Design of the Financial Structure of the Corporation*

10:30 am *coffee break*

Andrea Guaccero, *Shareholders' Agreements between Bylaws and Separate Contracts: A Comparative Perspective*

Giuseppe Zanarone, *Contractual Freedom in Limited Liability Corporations*

Giuliana Scognamiglio, *Corporate Groups: Direction and Coordination and Protection of Minority Shareholders*

12:30 pm *lunch*

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2:30 pm

III. Listed Corporations
and Regulatory Agencies

Chairperson Pietro Abbadessa

Luigi A. Bianchi, *The Evolution of the Powers of the Italian Securities and Exchange Commission (Consob)*

Luisa Torchia, *An Administrative Law Perspective on the Powers of the Regulatory Agencies*

Federico Ghezzi, *The Composition of the Board of Directors*

Mario Stella Richter jr, *The Governance Structure of Listed Corporations: Bylaws and Secondary Rules*

Angelo Provasoli, *The Duty of the Supervisory Board to Report Violations of the Applicable Rules to the Consob*

Alberto Alessandri, *The Sanctioning Power of the Consob in the Area of Market Abuses*

Eddy Wymeersch, *The European System of Financial Supervisors*

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6:00 pm

Concluding Remarks

Giuseppe B. Portale, *The New Governance of Banks*

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Written contributions can be sent to:

convegnovenezia.rivsoc@unibocconi.it.

Publication in the Proceedings of the Conference is subject to the positive evaluation of the Editors of the *Rivista*.

FEES AND REGISTRATION

Fees

Legal entities, business associations and law firms (two participants allowed)

before June 30, 2015
€ 800 + VAT

before October 15, 2015
€ 1.000 + VAT

Individuals (university and law school professors, PhD candidates, and judges and prosecutors are exempted from the registration fee)

before June 30, 2015
€ 450 + VAT

before October 15, 2015
€ 600 + VAT

Registration

Register online at www.veneziacongressi.com/rivista2015 following the instructions. On the same website, it is also possible to reserve a hotel among a list of options with a special discount for conference participants. Only regularly registered participants can access the venue of the Conference.

For further logistical information it is possible to contact Venezia Congressi via phone at +39-041-522800 or via email at rivistasocieta@veneziacongressi.com

Free transportation to and from San Giorgio Island via a small ferry reserved for conference participants will be provided from Riva degli Schiavoni (next to San Marco's square).