Regulatory Framework of Corporate Governance in Italy and Related Corporate Practices

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Abstract

This paper sought to investigate the regulatory framework of corporate governance in Italy, and gather insights into the related corporate practices in vogue among the listed Italian companies. The paper draws from the *Corporate Governance Code* published by Comitato per la Corporate Governance (Corporate Governance Committee) ; *Regulations for Public Offerings for Subscription and Sales of Financial Products* framed by Commissione Nazionale per le Società e la Borsa (CONSOB), the capital market regulator of Italy ; and the *2013 Report on Corporate Governance of Italian Listed Companies* published by CONSOB. It was found that the corporate governance code in Italy is based on the principle of *"comply or explain"* rather than *"have to comply with"* norms. The code is thus principle based, and not prescription based. If a company does not comply with any provision of the code, it has to report the reasons for non-compliance. It was also found that though the Italian companies have high ownership concentration, and family controlled management structures, their response to openness and transparency through modern corporate governance mechanisms is improving gradually, though a lot more is desired.

Keywords: **Borsa Italiana SPA, CONSOB, Corporate governance**

JEL Classification: G32, G34, G38, N44

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Corporate governance is one of the most talked about topics today in business, the financial markets, and among the corporate managements, shareholders, investors, governments, and regulatory bodies. A number of reports and codes on the subject have been published internationally - notable among them are the Report of the Cadbury Committee, the Report of the Greenbury Committee, the Combined Code of the London Stock Exchange, The OECD Code on Corporate Governance, and The Blue Ribbon Committee on Corporate Governance in the U.S. The subject gained real impetus with the unfolding of accounting scandals of WorldCom (year 2000) and Enron (year 2001) in the USA. Both these companies used unfair means to inflate their profits artificially. The bubble had to burst and it did, sooner than later. This led to the enactment of The Accounting Industry Reforms Act, 2002, popularly known as Sarbanes-Oxley Act. This Act became a benchmark the world over and has its imprint on all global efforts towards strengthening the corporate governance of public corporations.

Motivation for the Paper

I had an opportunity to attend a seminar conducted by LUISS Guido Carli University at Rome, Italy during November 2013. Professors from the university conducted the seminar on the themes of the Italian economy and business environment. It was during discussions with them that the idea to write on the corporate governance scenario in Italy germinated. This paper owes its origin to that visit. The visit was funded by my employer, FORE School of Management, New Delhi.

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Objectives of the Study

This paper seeks to:

(1) Investigate and discuss in brief the regulatory framework of corporate governance in Italy,
(2) Gather insights into and review the related corporate practices in vogue among the listed Italian companies, and,
(3) To offer suggestions for more transparent corporate governance in Italian listed companies.

Research Design

To serve the above objectives, information and data were gathered from the following Italian sources:

(1) *Corporate Governance Code* published by Comitato per la Corporate Governance (Corporate Governance Committee).

(2) Regulations for *Public Offerings for Subscription and Sales of Financial Products* framed by Commissione Nazionale per le Società e la Borsa (CONSOB), the capital market regulator of Italy.

(3) *2013 Report on Corporate Governance of Italian Listed Companies* published by CONSOB in November 2013.

Information and data contained in the above documents were studied and analyzed to investigate into the extent of regulatory requirements of corporate governance in Italy ; gather insights into the related corporate practices in vogue among the listed Italian companies to assess the present state of affairs in this area ; and to offer suggestions, if any, for setting higher standards of governance.

The Corporate Governance Code in Italy

Corporate governance norms for listed companies in Italy are enshrined in the document *Corporate Governance Code 2011* as approved in December 2011. The document was prepared and approved by the :

> Corporate Governance Committee, established in 2011 as a result of an agreement between the promoters of the Italian Corporate Governance Code (Borsa Italiana

Table 1. Contents of Corporate Governance Code in Italy

Article	Subject
1	Role of the board of directors
2	Composition of the board of directors
3	Independent directors
4	Internal committees of the board of directors
5	Appointment of directors
6	Remuneration of directors
7	Internal control and risk management system
8	Statutory auditors
9	Relations with the shareholders
10	Two-tier and one-tier systems

Source: Corporate Governance Committee. (2011). Corporate governance code: December 2011. Comitato per la Corporate Governance. Retrieved from http://www.borsaitaliana.it/comitato-corporate-governance/homepage/codice2011.en.pdf

> and investor associations: Abi, Ania, Assogestioni, Assonime and Confindustria). The aim of this Committee is to ensure a continuous and structured process for both the production and the monitoring of the best practices adopted by Italian listed companies by the end of the fiscal year beginning in 2012, informing the market through the Corporate Governance Report to be published in the following fiscal year. (Corporate Governance Committee, 2011, p.1)

It is worthwhile to note that adoption of and compliance with this corporate governance code is voluntary. It should not, however, be construed to mean that the listed companies are free not to follow it. What it means is that it is instead based on the principle of *"comply or explain"*. The code contains 10 articles as presented in the Table 1.

As per the code, each article :

> is divided into principles, criteria and comment. The criteria set out the recommended conduct typically necessary in order to reach the objectives set out in the principles. Comments instead pursue two goals: Clarification, also through examples, of the relevant principles and criteria; and Description of additional positive conduct, intended as possible desirable methods to pursue the objectives set out in the principles and criteria. (Corporate Governance Committee, 2011, p.6)

The code further provides :

> Each Italian company with listed shares adopting the Code is to provide in its corporate governance report accurate, concise, and easily understandable information on the manner through which each single recommendation contained in the principles and criteria has been effectively implemented during the period covered by the report. If the company has not implemented, in whole or in part, one or more recommendations, it has to supply adequate information with regard to the reasons for the omitted or partial implementation. In the event that the principles and criteria relate to optional conduct, a description of the line of conduct followed is required, though it is not necessary to provide the reasons for the choices made. (Corporate Governance Committee, 2011, p.6)

CONSOB Regulations and the 2013 Report on Corporate Governance of Italian Listed Companies

Commissione Nazionale per le Società e la Borsa (CONSOB), the capital market regulator of Italy, has framed detailed regulations for IPOs/FPOs to be floated in the Italian capital market. Among others, the regulations pertain to ownership and control structure, corporate boards, annual general meetings, and related-party transactions of listed companies, all being at the centre stage of corporate governance systems in any geographic economy.

CONSOB, in addition to making the regulations, has taken upon itself the task of monitoring corporate governance practices among listed companies. It initiated preparing an annual report on the corporate governance compliance by Italian listed companies beginning 2012 (in the Italian language). The 2013 report is the second in the series and is available in English also (CONSOB, n.d.). The report was published in November 2013 (hereinafter cited as the report).

The report contains exhaustive data on all Italian companies with ordinary shares listed on Borsa Italiana SPA - MTA Stock Exchange as of June 30, 2013. Market capitalization of the ordinary shares of these companies was 346, 307 million of Euro as of June 30, 2013.

Table 2.Snapshot of CONSOB's 2013 Report on Corporate Governance of Italian Listed Companies

Sl. No.	Features	Details
1	Companies covered	All Italian companies with ordinary shares listed on Borsa Italiana SPA - MTA Stock Exchange as of June 30, 2013.
2	Market capitalization	346, 307 million of Euro as of June 30, 2013.
3	Data period	4 year ends ranging December 2010, 2011, 2012, June 2013 and December 1998 as the base year.
4	Parts	Four:
		1. Ownership and control structure,
		2. Corporate boards,
		3. Annual general meetings and
		4. Related party transactions.
5	Tables	57

Source: CONSOB. (2013).Report on corporate governance of Italian listed companies: November 2013. Retrieved from http://www.consob.it/mainen/consob/publications/rcg/index.html

Table 3. Ownership and Control Structure

Sl. No.	Aspects covered	Details	June 2013	2012	1998
1	Control model and ownership structure	Ordinary shares held by the largest shareholder	49.7%	49.6%	51.7%
2	Identity of owners	Family controlled companies	NA	152 (60.6% of all)	NA
3	Separation between	• %age of pyramid firms	NA	16.3%	36.1%
	ownership and control	• Their market capitalization	NA	54.3%	75%
		• Voting rights higher than cash flow rights in these firms by……	NA	18.6%	24.2%
4	Companies issuing non-voting shares	Number of such companies	NA	32	70

Source: CONSOB. (2013).Report on corporate governance of Italian listed companies: November 2013. Retrieved from http://www.consob.it/mainen/consob/publications/rcg/index.html.
NA: Not available/applicable.

The report contains 57 tables. Data pertains to 4 year ends ranging from December 2010, 2011, 2012, June 2013, and by taking December 1998 as the base year. The analysis is carried in four parts:

[1] Ownership and Control Structure,
[2] Corporate Boards,
[3] Annual General Meetings, and
[4] Related Party Transactions.

Data has been provided up to 2012 end, and in some cases, till June 2013 end, as well as from the year 1998 where available/applicable as per the corporate governance code. It needs to be reiterated that corporate governance code was promulgated in December 2011 and certain other regulations were enacted by CONSOB in March 2010 and August 2012 (mentioned in related parts of the paper that follow). Therefore, the data that has been provided in CONSOB's 2013 report on corporate governance does not follow a year wise uniform pattern. The Table 2 presents a snapshot of the report.

Brief Summary and Review of CONSOB's 2013 Corporate Governance Report

The following paragraphs attempt to present the essence of the findings of the report in a precise summary manner and a review thereof:

[1] Ownership and Control Structure : This part of the 2013 Corporate Governance Report focuses on ownership structures of Italian listed companies, the extent to which the family-owned control is being loosened by the owners and the market pressure groups, basically the institutional investors, working in that direction. The summary statistics on these aspects are provided in the Table 3.

(i) Control Model and Ownership Structure: It was observed that the data "on the control model and ownership structure of listed firms confirms the traditional features of the Italian market in terms of high ownership concentration and limited contestability of control" (CONSOB, 2013, p.1). However, it is gratifying to note that "in recent years, there has been a progressive dilution of major controlling shareholders towards weaker forms of control or voting agreements" (CONSOB, 2013, p.1). The mean shareholding of the largest shareholder came down from 51.7% in 1998 to 49.7% in June 2013.*The ownership pattern thus seems to be moving towards gradual de-concentration.*

(ii) Identity of Owners: As for the "identity of owners, Italian listed companies are still mainly in the hands of families, which control almost 2/3rd of the capital market, and the greatest part of the Italian industrial sector" (CONSOB, 2013, p.1). Out of 251 companies, 152 (60.6%) were family controlled as of 2012. However, it goes to the credit of the financial sector that it has achieved a more dispersed ownership structure, and is thus more open to decontrol. *Nevertheless, the role of family ownership cannot be over emphasized in capitalist economies.*

(iii) Separation Between Ownership and Control : According to the report :

> As far as the separation between ownership and control is concerned, data at the end of 2012 shows that companies recur less to control enhancing mechanisms than in 1998. In particular, the use of pyramid structures, although stable in recent years, shows a strong reduction with respect to 1998, both in terms of number of companies and market capitalization. (CONSOB, 2013, p.2)

The report further states :

> From 1998 to 2012, the percentage of firms belonging to pyramids or to the vertical structure of a mixed group have halved (from 36.1% to 16.3% of all listed companies), while their share of market capitalization has declined by 20 percentage points. In these firms, voting rights are on average 18.6% higher than cash flow rights (CONSOB, 2013, p.2). That is, non-voting rights.

Hence, separation between ownership and control is thus gradually widening.

(iv) Companies Issuing Non-Voting Shares : As for companies issuing non-voting shares, the report states that their numbers came down to 32 in 2012 from 70 in the year 1998 as a result of market pressure. The report states, "market pressure is mainly due to the presence of institutional investors in listed companies' ownership structure, which has been almost stable through the crisis. In this regard, interesting evidence comes from the stakes held by institutional investors" (CONSOB, 2013, p. 1). *With a more active portfolio strategy, these investors (namely, venture capital, private equity, and sovereign funds etc.) are gaining an increasing role in the Italian capital*

Table 4. Corporate Boards

Sl. No.	Aspects covered	Details	June 2013	2012	2010/2011
1	Traditional family controlled management	Companies envisaging an alternative system of single-tier or two-tier management	NA	8 out of 251	8 out of 270(2010)
2	Board size	Number of board members	NA	2 to 25 (Av. 10)	NA
3	Independent directors	%age of independent directors	NA	42.6%	NA
4	Female representation	%age of female directors	17.1%	11.6%	6.8% (2010)
5	Multiple directorships	• Percentage of financial companies with no multiple directors	20%	NA	12% (2011)
		• Percentage of financial companies with majority of multiple directors	3.7%	NA	16.9%(2011)
6	Board committees	a. Number of companies having:			
		• Remuneration committee	NA	215	NA
		• Internal control and risk management committee	NA	218	NA
		• Nomination committee	NA	93	NA
		b. Market cap represented by:			
		• Remuneration committees	NA	98.9%	
		• Internal control and risk management committees	NA	98.9%	NA
		• Nomination committees	NA	69.9%	NA
7	Self-evaluation of the performance of the board	Number of companies having performed such a board review	NA	177	NA
				(70.5% of market capitalization)	
8	Succession planning	Number of companies having established succession plans	NA	13(5.2% of market capitalization)	NA

Source: CONSOB. (2013).Report on corporate governance of Italian listed companies: November 2013. Retrieved from http://www.consob.it/mainen/consob/publications/rcg/index.html.
NA: Not applicable/available.

market and are building up pressure on the corporate managements to enhance decontrol.

Findings of this part related to Ownership and Control Structure are summarized below :

(i) The ownership pattern seems to be moving towards gradual de-concentration.

(ii) Nevertheless, the role of family ownership cannot be over emphasized in capitalist economies.

(iii) Separation between ownership and control is gradually widening.

(iv) With a more active portfolio strategy, institutional investors (namely, venture capital, private equity, and sovereign funds etc.) are gaining an increasing role in the Italian capital market and are building up pressure on the corporate managements to enhance decontrol.

[2] Corporate Boards : This part of the report focuses on management control, board size, independent directors, female representation on the board, multiple directorships, board committees, self-evaluation of the performance of the board, and succession planning. Summary statistics on these aspects is provided in the Table 4.

(i) Traditional Family Controlled Management : Data suggests that "Italian listed companies largely adopt the traditional family controlled management and control system. At the end of 2012, only 8 companies out of 251 envisaged an alternative system" (CONSOB, 2013, p.12) of single-tier or two-tier. The single-tier system envisages a board appointed by shareholders and a management committee comprising of non-executive independent directors appointed by the board. The two-tier system envisages the formation of a supervisory board, out of the board of directors, appointed by shareholders, and a management board formed by the supervisory board out of its members. *Hence, this is an area of great concern in the corporate governance of Italian listed companies.*

(ii) Board Size : The report finds that board size is positively correlated with firm size. There is a vast gap in the board composition with a minimum of two directors to a maximum of 25 directors as of 2012 end. However, the average number is 10. *However, I am of the opinion that 25 is too large a number for board structure.*

(iii) Independent Directors: As for board composition, the report finds that the financial sector companies are ahead of services and industrial companies in respect of average number of independent directors. As of 2012 end, 93 companies had, on an average, 1.7 independent directors. Thus, independent directors, forming 42.6% of the total number of directors, are now comparatively quite widespread. This has resulted into more diversity in the boards as compared to earlier times. *Financial companies again score over services and industrial companies in respect of board diversity which augurs well for the financial safety of the market participants.*

(iv) Female Representation : The CONSOB report states that "after the first implementation of the Law 120/2011, which came into force in August 2012, data on female representation on corporate boards shows better gender balance in Italian listed companies" (CONSOB, 2013, p.12). At the end of June 2013,17.1% of the total directorships were represented by female directors as against 6.8% in 2010. However, I have a question here. *With due respect to women, does their presence on the boards really result in better corporate governance? Probably, a framework needs to be established to identify and measure their supposed to be unique contribution, if any, and based on the empirical evidence from the implementation of that framework, the insistence on their representation on the board should be reviewed.*

(v) Multiple Directorships : The report states that :

> Due to the introduction of the Law 214/2011, multiple directorships have decreased in the financial sector. In particular, the percentage of financial companies with no multiple directors on the board went from 12 to 20% and they (multiple directors) are now the majority of board members in only 3.7 % of financial companies (16.9% in 2011). (CONSOB, 2013, p.13)

The financial sector thus seems to be more responsive to transparent corporate governance practices.

(vi) Board Committees : The report observed that as of 2012 end :

> As for the board committees, 215 companies established the remuneration committee, while 218 firms have the internal control and risk management committee. The nomination committee is present in a fewer number of companies (93), probably because the corporate governance code did not recommend its institution (leaving the choice of its establishment to the company discretion). (CONSOB, 2013, p.13)

Remuneration committees and internal control & risk management committees each represented 98.9% of market capitalization, while nomination committees represented only 69.9%. *The Nomination committee,*

Table 5. Annual General Meetings

Sl. No.	Aspects covered	Details	2013	2012
1	Forum for corporate dialectics	• Average number of individual shareholders attending AGMs	198	205
		• Number of institutional investors attending AGMs	159	154
		• Total share of capital represented at AGMs	66%	65.6%
		• Institutional investors' capital represented at AGMs	7.2%	6.1%
2	Presence of institutional investors	a. In FTSE MIB and Mid Cap companies:		
		• Number of institutional investors present	496	NA
		• Share of capital represented by them at AGMs	15.3%	NA
		b. In smaller companies:		
		• Number of institutional investors present	17	NA
		• Share of capital represented by them at AGMs	3.7%	NA
3	Shareholders' Say-on-Pay mechanism	• Percentage of shareholders dissenting the managerial remuneration	2013:4.7%	2012:5.1%

Source: CONSOB. (2013).Report on corporate governance of Italian listed companies: November 2013. Retrieved from http://www.consob.it/mainen/consob/publications/rcg/index.html

NA: Not applicable/available.

however, plays a very significant role in spreading board diversity, which is at the core of corporate governance. The companies, therefore, need to go beyond regulatory recommendations and formulate corporate governance policies in spirit.

(vii) Self- Evaluation of the Performance of the Board : As per the corporate governance code, the boards of directors in Italian listed companies are required to carry out a self-evaluation of their performance and that of their committees at least once a year. The report states that, "at the end of 2012, 177 companies declared to have performed such a board review (accounting for 70.5% of the market capitalization)" (CONSOB, 2013, p.13). *Hence, corporate response to self-evaluation of the board performance needs to improve further.*

(viii) Succession Planning : As for succession planning, as of 2012 end, dismally, only 13 companies (representing just 5.2% of market capitalization) had established succession plans ; out of these, eight were for the directors and five were for the executives. *Hence, companies need to be highly proactive in this respect to ensure fruitful sustainability of the corporations and protection of interests of all stakeholders.*

The findings of this part related to Corporate Boards are now summarized :

(i) Large adoption of the traditional family controlled management and control system is an area of great concern in the corporate governance of Italian listed companies.

(ii) Board structure needs to be short. Holding board meeting of 25 members is like conducting a conference.

(iii) Financial companies again score over services and industrial companies in respect of board diversity which augurs well for the financial safety of the market participants.

(iv) As for female board members, a framework needs to be established to identify and measure their supposed to be unique contribution, if any, and based on the empirical evidence from the implementation of that framework, the insistence on their representation on the board should be reviewed.

(v) The financial sector seems to be more responsive to transparent corporate governance practices.

(vi) The Nomination committee plays a very significant role in spreading board diversity which is at the core of corporate governance. The companies, therefore, need to go beyond regulatory recommendations and formulate corporate governance policies in spirit.

(vii) Corporate response to self-evaluation of the board performance needs to improve further.

(viii) Italian listed companies need to be highly proactive with respect to succession planning to ensure fruitful sustainability of the corporations and for protection of interest of all the stakeholders.

[3] Annual General Meetings : This part of the report focuses on corporate dialectics, presence of institutional investors in FTSE MIB and mid cap companies, and shareholders' say-on-pay mechanism. Summary statistics on these aspects are provided in the Table 5.

(i) Forum for Corporate Dialectics : As per the report, data "on Italian listed companies' AGMs confirm their role as a forum for corporate dialectic. Data shows that the number of investors attending AGMs is stable in the last 2 years as well as the number of institutional investors" (CONSOB, 2013, p.20). On an average, 205 investors attended the AGMs in 2012 and 198 in 2013. The corresponding numbers for institutional investors were 154 and 159. The report further states, "As for the share of capital represented at AGMs, the average percentage held by all shareholders is relatively high and constant in the examined period (66%), while institutional investors' share has increased"(CONSOB, 2013, p.20) by 20% from 6.15% to 7.2%. *However, this also suggests the marginal presence of small shareholders at the AGMs. An AGM in the true sense of the word needs to be attended by a large individual shareholder base and should provide them full opportunity to express themselves. Hence, Italian listed companies need to devise ways and means to attract a large number of individual minority shareholders to their AGMs.*

(ii) Presence of Institutional Investors in FTSE MIB and Mid Cap Companies: The report noticed that :

> As expected, the presence of institutional investors is particularly high in FTSE MIB and Mid Cap companies, with an average of almost 500 investors attending the AGM. The average share of capital represented by institutional investors is also significantly higher in FTSE MIB and Mid Cap companies' meetings, where it reaches 15.3 percent" (CONSOB, 2013, p.20). In other (smaller) companies, the corresponding figures are 17% and 3.7% only.

Corporate size obviously matters. Clearly, the institutional investors prefer bigger companies for investing.

(iii) Shareholders' Say-on-Pay Mechanism: As per the report :

> Evidence from 2012 AGMs shows that the shareholders' say-on-pay mechanism (i.e. the non-binding vote on remuneration policy recently introduced by the Italian legislator) has prompted, in its first implementation, more than 5% of the listed companies' shareholders attending the AGM to vote against the remuneration policy. (CONSOB, 2013, p.20)

The report adds, "As for 2013 AGMs, records of Italian companies illustrate that on an average, shareholders' dissent has gone slightly down (from 5.1 to 4.7 percent)" (CONSOB, 2013, p.20). *But this decline is not a good sign.*

The report goes on :

> The breakdown of shareholders' dissent by control model shows that it is

Table 6. Related Party Transactions

Sl. No.	Aspects covered	Details	June 2013	2012	2011
1	Regulation on related party transactions	Regulation promulgated in 2010.	...	....	....
2	Disclosures on RPTs	• Average number of RPTs reported by the same company.	35 (1/2 year)	79	80
		• Percentage of large sized companies reporting RPTs.	32.2%	43.9%	40.5%
3	Risk profile of RPTs	• Percentage of transactions not affecting revenue generating capacity.	54.3%	54.4%	56.3%
4	Parties to RPTs	• Percentage of RPTs entered into with the controlling shareholders (Av. 79.4%)	91.4%	78.5%	75%
		• Percentage of RPTs with subsidiary or associate companies (Av. 13.4%)	....	15.2%	17.5%
		• Percentage of RPTs with non-shareholder directors/managers. (Av. 7.2%)	8.6%	16.3%	7.5%
5	Extent of *material* RPTs	• Number of material RPTs reported	6	28	38
		• Percentage of large cap companies reporting such RPTs	66.7%	71.4%	36.8%
6	RPTs in the services sector	• Percentage of service companies	33.3%	NA	NA
		• Percentage of banking companies	33.3%	NA	NA
		• Percentage of other financing companies	33.3%	NA	NA

Source: CONSOB. (2013).Report on corporate governance of Italian listed companies: November 2013. Retrieved from http://www.consob.it/mainen/consob/publications/rcg/index.html
NA: Not applicable/available.

> particularly concentrated in widely held and weakly-controlled companies. Differently, when focusing on the votes cast by institutional investors only, it emerges that institutional investors vote more often against the remuneration policy in companies whose control is held through a shareholders' agreement. (CONSOB, 2013, p.21)

It means that individual shareholders are more indifferent to the remuneration policies and they need to exercise their right in this regard in their own interest. Overall, it is observed that "shareholders' say-on-pay dissent seems more concentrated in companies where a remuneration committee is established or a minority director is present" (CONSOB, 2013, p.21).

The findings of this part related to Annual General Meetings are now summarized:

(i) There was a virtual absence of small shareholders at the AGMs. An AGM in the true sense of the word needs to be attended by a large individual shareholder base and should provide them full opportunity to express themselves. Hence, Italian listed companies need to devise ways and means to attract a large number of individual minority shareholders to their AGMs.

(ii) Representation of institutional investors was quite high in the AGMs of large listed companies.

(iii) Individual shareholders are more or less indifferent to the remuneration policies and they need to exercise their right in this regard in their own interest.

[4] Related Party Transactions : This part of the report focuses on regulatory aspects on related party transactions (RPTs), disclosures on RPTs, risk profile of RPTs, parties to RPTs, and RPTs in the service sector. The summary statistics on these aspects are provided in the Table 6.

(i) Regulation on Related Party Transactions : The report states that for the first time :

> In March 2010, CONSOB enacted a regulation on Related Party Transactions (RPTs) covering both approval and disclosure requirements to be followed by listed companies in dealing with their insiders. Such requirements are graduated according to the magnitude of the transaction (i.e. its materiality, as a result of a significance test set forth by the regulation), to the risk of minority exploitation and to companies' size. (CONSOB, 2013, p.27)

Furthermore :

> The regulation allows companies to set up their own procedures with some degree of flexibility in the identification of RPTs, in particular with regard to the definition of material RPTs, subject to strengthened approval and disclosure requirements on the one side, and of small amount transactions, to be exempted from all requirements, on the other. (CONSOB, 2013, p.27)

It is noteworthy that the emphasis of the regulation is thus more qualitative than quantitative, and rightly so.

(ii) Disclosures on RPTs: The report finds that companies have taken advantage of the degree of flexibility provided for by CONSOB rules :

> The new regime has led to in-depth disclosure on a considerable number of material RPTs. Nearly 80 transactions a year, quite frequently entered into by a same company, were reported in 2011 and 2012 and in the first semester of 2013, 35 material RPTs were disclosed to the market. Companies that entered into such transactions are in two cases out of three small-sized and more frequently operate in the financial or industrial sectors. (CONSOB, 2013, p.28) (as of June 2013)

Percentage of large sized companies disclosing RPTs came down from 40.5% in 2011 to 32.2% in 2013. *It is really a positive sign for the capital market that bigger companies entering RPTs are just half of the smaller companies. It implies that the extent of opportunity loss to the companies, if any, on account of RPTs is not that material as it can be reasonably assumed that the size of RPTs is bound to be proportionate to the size of the company. The bigger the company, the higher the amounts involved in RPTs and vice-versa. This phenomenon is really an indicator of healthy corporate performance.*

(iii) Risk Profile of RPTs: Data revealed that majority of the RPTs that have been reported since 2011 affect the companies' cash flows, but not their long-term productive assets. Percentage of such transactions was 56.3% in 2011 which went down to 54.3% in 2013. *This suggests that they do not impact the revenue generation capacity of the companies and also, the vulnerability of RPTs is quite low.*

(iv) Parties to RPTs : The report states that :

> almost 80 percent of all RPTs have been entered into with the controlling agent or with other shareholders exerting significant influence over the company, while 13.4 percent have involved subsidiary or associate companies. Finally, very few RPTs

Table 7. Format of Quarterly Compliance Report on Corporate Governance

Name of the Company: Quarter ending on:

	Particulars	Clause of Listing Agreement	Compliance Status: Yes/No	Remarks
I. Board of Directors		49(I)		
A.	Composition of Board	49 (IA)		
B.	Non-executive Directors' compensation & disclosures	49 (IB)		
C.	Other provisions as to Board and Committees	49 (IC)		
D.	Code of Conduct	49 (ID)		
II. Audit Committee		49 (II)		
A.	Qualified & Independent Audit Committee	49 (IIA)		
B.	Meeting of Audit Committee	49 (IIB)		
C.	Powers of Audit Committee	49 (IIC)		
D.	Role of Audit Committee	49 II(D)		
E.	Review of Information by Audit Committee	49 (IIE)		
III. Subsidiary Companies		49 (III)		
IV. Disclosures		49 (IV)		
A.	Basis of related party transactions	49 (IV A)		
B.	Disclosure of Accounting Treatment	49 (IV B)		
C.	Board Disclosures	49 (IV C)		
D.	Proceeds from public issues, rights issues, preferential issues etc.	49 (IV D)		
E.	Remuneration of Directors	49 (IV E)		
F.	Management	49 (IV F)		
G.	Shareholders	49 (IV G)		
V. CEO/CFO Certification		**49 (V)**		
VI. Report on Corporate Governance		**49 (VI)**		
VII. Compliance		**49 (VII)**		

Source: National Stock Exchange. (n.d.). Listing agreement : Clause 49 on corporate governance. Retrieved from http://www.nseindia.com/corporates/content/listing_agreement.htm

> (7.2 percent of the total) have been entered into with non-shareholder directors or key managers or with their businesses. (CONSOB, 2013, p.28)

Percentage of transactions with the controlling agent and other influential shareholders has gone up from 75% in 2011 to 91.4% in 2013. *The results here are on the obvious lines.*

(v) Extent of Material RPTs: It is to be noted that :

> from the beginning of 2011 until the end of June 2013, 72 *material* RPTs in the ordinary course of business were reported to CONSOB. Such transactions very often (two cases out of three in 2012 and 2013) involve large caps, namely companies included in the FTSE MIB index. Furthermore, it is noticed that reporting companies operate in all industries and particularly in the utilities. (CONSOB, 2013, p. 29)

It proves our above stated assumption that the size of RPTs is bound to be proportionate to the size of the company. That is why two thirds of the material RPTs pertain to large cap companies.

(vi) RPTs in the Service Sector: The service sector is also not immune from RPTs. The report finds that :

> the few ordinary transactions reported in the first half of 2013 equally (33.3%) involve the supply of services to related businesses (owned either by the controlling agent or by the listed company itself), financing by banks towards subsidiaries or associates and infra-group funding in non-banking listed companies. (CONSOB, 2013, p.29)

Thus, the financial sector is also involved in RPTs, which does not augur well for the economy.

The findings of this part on Related Party Transactions are now summarized:

(i) The emphasis of the regulation on RPTs is more qualitative than quantitative, and rightly so.

(ii) It is really a positive sign for the capital market that bigger companies entering RPTs are just half of the smaller companies. It implies that the extent of opportunity loss to the companies, if any, on account of RPTs is not that material as it can be reasonably assumed that the size of RPTs is bound to be proportionate to the size of the company. The bigger the company, the higher are the amounts involved in RPTs and vice-versa. This phenomenon is really an indicator of healthy corporate performance.

(iii) Another healthy indicator is that RPTs do not impact the revenue generation capacity of the companies and the vulnerability of RPTs is quite low.

(iv) Two thirds of the material RPTs pertain to large cap companies. It proves our above stated assumption that the size of RPTs is bound to be proportionate to the size of the company.

(v) The financial sector is also involved in RPTs, which does not augur well for the economy.

Suggestions for More Transparent Corporate Governance in Italian Listed Companies

The following suggestions for more transparent corporate governance in Italian listed companies emerge from the above review:

(1) Traditional family controlled management is an area of great concern in the corporate governance of Italian listed companies. They need to be more professionalized.

(2) The widening of the separation between ownership and control needs to be fast paced.

(3) Twenty five seems to be too large a number for board structure. Probably, it needs restriction.

(4) Before pursuing insistence on one third female representation on corporate boards, a framework needs to be established to identify and measure their unique contribution, if any, and a suitable policy then needs to be formulated based on the empirical evidence from the implementation of that framework.

(5) With respect to nomination committee, the companies need to go beyond regulatory recommendations and formulate corporate governance policies in spirit.

(6) Corporate response to self-evaluation of the board performance needs to improve further.

(7) Companies need to be highly proactive in succession planning to ensure fruitful sustainability of the corporations and protection of interests of all the stakeholders.

(8) Italian listed companies need to devise ways and means to attract a large number of individual minority shareholders to their AGMs to have more fruitful corporate dialectics.

(9) The individual shareholders should not be indifferent to the remuneration policies and they need to exercise their right in this regard in their own interest.

(10) The financial sector should not be involved in RPTs in the interest of the welfare of the economy at large.

Conclusion and Implications

In conclusion, the following are my observations :

(1) The Corporate Governance Code in Italy has been formulated and approved by Borsa Italiana and Investor Associations and not by the Capital Market Regulator (CONSOB).

(2) The code is based on the principle of *"comply or explain"* rather than *"have to comply with"* norms. The code is thus principle based and not prescription based. If a company does not comply with any provision of the code, it has to report the reasons for non-compliance.

(3) In addition, CONSOB has also framed detailed regulations for public offerings for subscription and sales of financial products, which among others, pertain to ownership and control structures, corporate boards, annual general meetings, and related party transactions of listed companies, all being at the centre stage of corporate governance systems in any economic set up, and for that matter in Italy as well.

(4) CONSOB also monitors the application of the corporate governance code by the listed Italian companies. This monitoring of the code, as evident in the annual report discussed above, is bound to contribute to the development of a more efficient regulatory framework of corporate governance.

(5) The annual report highlights that though the Italian companies have high ownership concentration and family controlled management structures, their response to openness and transparency through modern corporate governance mechanisms is improving gradually.

(6) It emerged that the financial sector in Italy is far more responsive to openness than other sectors. It sounds well for the Italian economy as a disciplined financial sector is the backbone of any economy.

(7) The suggestions made above are expected to lead towards more transparent corporate governance in Italian listed companies. CONSOB, BorsaItaliana, and the listed Italian companies can draw from these suggestions.

(8) In India, SEBI (Securities and Exchange Board of India), the Indian capital market regulator could take a clue from CONSOB and carry out research into the corporate governance practices of Indian listed companies. Such efforts will go a long way in strengthening the regulatory corporate governance code in India. The company wise data is already available with SEBI in the prescribed format reported by listed companies to it quarterly (as exhibited in the Table 7) as well as in the corporate annual reports. All that SEBI has to do is to consolidate this information, analyze it, ascertain the extent of compliance in India, and come out with a CONSOB type report. Such an analytical report will provide policy inputs to SEBI for further reforms in the corporate governance regulatory framework as well as put pressure on the corporates for better compliance.

Limitations of the Study and Scope for Further Research

This study provides a broad view of the corporate governance practices among listed Italian companies. More specific studies can be carried out, each focusing on a single dimension of corporate governance. Sectoral studies can also be carried out. The financial sector may be investigated in more details due to its interlinking effect with the overall industry and economy.

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References

CONSOB (n.d.). *Regulations for 'Public offerings for subscription and sales of financial products'.* Commissione Nazionale per le Società e la Borsa. Retrieved from http://www.consob.it/mainen/documenti/english/laws/reg11971e.htm?symblink=/mainen/issuers/listed_companies/advanced_search/reg11971e.htm

CONSOB. (2013). *Report on corporate governance of Italian listed companies: November 2013.* Retrieved from http://www.consob.it/mainen/consob/publications/rcg/index.html.

Corporate Governance Committee. (2011). *Corporate governance code: December 2011. Comitato per la Corporate Governance.* Retrieved from http://www.borsaitaliana.it/comitato-corporate-governance/homepage/codice2011.en.pdf.

National Stock Exchange. (n.d.). *Listing agreement : Clause 49 on corporate governance.* Retrieved from http://www.nseindia.com/corporates/content/listing_agreement.htm.