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### Is the “new” parmalat model of corporate governance a best practice in Italy?

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#### Abstract

This paper presents an analysis of corporate governance of the “new” Parmalat, born in the aftermath of the infamous financial scandal, and aims at verifying if this new model of governance can be considered a best practice for Italian listed companies. Many papers have already highlighted that the Parmalat scandal was facilitated by bad governance which did not have an efficient system for the safeguarding of creditors and minority shareholders in presence of a family corporation.

This paper presents the results of the comparison between the “old” and “new” rules of Parmalat corporate governance, highlighting the considerable differences in the composition and functions of the various company bodies. Moreover, an in-depth analysis of the efficacy of the external and internal control systems is also provided. The main points of strength which make it possible to consider the new Parmalat as a model of best practice in Italy are identified, although critical aspects are also pointed out. The paper concludes by making suggestions aimed at strengthening the model of corporate governance of Italian listed companies.

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**Keywords-component: corporate governance, public company, Parmalat.**

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#### 1. Introduction

Parmalat is an Italian worldwide leading dairy company whose financial scandal that broke out in December 2003 was widely covered by both the national and international press due to the fact that it was the

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biggest ever financial scandal in European corporate history (Buchanan, Yang, 2005). The Parmalat crisis was an opportunity for international researchers, media, etc. to study the Italian governance system. As a matter of fact, Italian governance had not previously been studied, therefore the case made it necessary to face the various critical aspects of governance in Europe compared with American and Anglo-Saxon model of governance. Parmalat is now a public company, and five years after the financial scandal it is striving to regain the trust of the markets, also by means of a governance model that is in keeping with the highest national and international standards. With reference to the Italian corporate governance system it was “historically considered poor, characterized by an inactive takeover market, weak accounting standards, limited presence of institutional investor and where the legal protection for investors was low” (Buchanan and al.). Besides, the Italian corporate governance system is characterised by a high degree of direct ownership concentration, both for listed and unlisted companies (Bianco, Casavola, 1999 and Enriques, Volpin, 2007). The Italian corporate governance system may be classified in the Latin sub-group (De Jong, 1999). However, it has its own unique features, and does not entirely fit into the international standards models (Melis, 1999). Finally the Italian corporate governance system is based on pyramidal firm structure. According to La Porta et al. (2000) the strongest corporate governance system is the Anglo-Saxon one that offers the highest level of legal protection to stockholders.

The Parmalat scandal has been a case study for different authors who explained, under different point of views, the reasons for the crisis focusing on the first cause of the Parmalat financial fraud: the corporate governance system. Melis (2005) showed that there was a huge concentration of power in a sole person in Parmalat. In fact, the controlling shareholder was able to hold the positions of Chairman and CEO of Parmalat Finanziaria. As Melis stated (2000) the high level of concentration of power in non financial listed companies is an Italian critical issue. Moreover, the author showed that Parmalat Corporate Governance wasn't able to comply with some of the key existing Italian Corporate Governance standards of best practice, such as the presence of independent directors, the composition of the board of directors and, especially, of the internal control committee. Buchanan and al. showed how Parmalat's failure was linked to “governance failures with particular reference to the conflict of interest between the controlling shareholder and the minority shareholders”. The authors sentenced that “the Parmalat bankruptcy was the result of the failed proper corporate governance, not inevitable business decline”. McCahery and Vermeulen (2005) focused their paper on Parmalat as it was an extremely unique case with reference to Special purpose entities (SPEs). In fact “management used a virtual hydra head of offshore subsidiaries and special purpose entities to cover up their losses and prop up the financial situation of the group”. Besides the Parmalat scandal was used by the author to exemplify the importance of the variety of legal techniques to curb related party transactions. Also Tabasso (2004) underlined that the Parmalat “fiasco” demonstrated the ineffectiveness of prevention and controls in many critical areas of the corporate world, prompting a serious reappraisal of self-regulation codes and legal standards. An analysis of the financial and economic aspects of the Consolidated Financial Statement of Parmalat during the four-year period 1998-2002 showed that there were some critical accounting areas that were not observed by the Parmalat controlling bodies (Bava and Devalle, 2004). The biggest financial scandal in Italy (an example of worst practice of corporate governance) gives rise to an analysis of the governance rules of the “new” Parmalat, which were defined following the group's restructuring process with the main aim of regaining the trust of the markets and becoming a model of best practice. This paper does not intend to analyze whether the Italian rules of Corporate Governance are a best practice in Europe, but it aims at verifying whether, in the Italian Corporate Governance system, the “new” Parmalat governance can be considered a best practice of governance. Thus, this paper presents the results of the comparison between the “old” and “new” rules of Parmalat corporate governance, highlighting the considerable differences in the composition and functions of the company bodies. The Parmalat Group underwent a in-depth restructuring process with the main aim of regaining the trust of the markets and became the first public company

(Bonicelli E. (2007), Parmalat public company, Il Sole 24 ore, Milano) in Italy without a strong blockholder and without a trade union agreement.

The remainder of this paper is organized as follows. Section 2 presents an overview of Italy's Corporate Governance System and the question research. The Parmalat Case Study is presented in Section 3. The paper concludes with a discussion of the findings and some indications regarding future development.

## **2. Background and question research**

Italian corporate governance framework and rules have been substantially modified since 1998 with the introduction of the Draghi Law. More in general, Corporate Governance Reforms in Europe have been driven by three factors (Enriques, Volpin, 2007). First, Kamar (2006) stated that reforms aimed to make national markets more attractive. Secondly (Ferran, 2004) the efforts of the European Union was to institute a common framework of rules. Thirdly many of the corporate governance reforms are a response to national and international financial frauds and scandals (Enrique, 2003). These events have clearly shown the weakness of the worldwide and Italian corporate governance framework for both listed and non listed companies. Therefore, in order to rectify the situation appropriately, the legislator, has tried to protect minority shareholders of listed companies.

Then the aim of this paper is to analyse if Parmalat could be considered a best practice of corporate governance in Italy by an analysis of the new and old model of governance.

To reach the objectives described the research question is the following:

(Q1) is the "new" Parmalat model of corporate governance a best practice in Italy after the its financial scandal?

## **3. Data and methodology**

The analysis is based on the Parmalat case. In particular, we have analysed the corporate governance system before and after the financial scandal. Then we compared the Parmalat model of corporate governance with the international Code of Corporate governance. Information were collected from the Parmalat corporate governance report with reference to 2010 and 2005.

## **4. Results**

In order to deal with the Parmalat crisis, at the end of December 2003 the Italian government issued a decree law 347/2003 (the "Parmalat decree") to save the Italian Group from bankruptcy. The law introduced a series of derogations from the 1999 "Prodi-bis decree" and, above all, accelerated extraordinary administration proceedings. The special commissioner, Mr Bondi, presented a Parmalat group industrial and restructuring plan to the Minister of Industry and to the main trade unions in the agro-food sector (on 20 July 2004). The principal aim of the plan was to free Parmalat from its debts, given that the company, although vulnerable, had a positive operating margin and could therefore be self-sustaining.

The plan emphasized the good prospects of the divisions identified as constituting the core business of the future Parmalat - UHT milk, fresh milk, milk derivatives and fruit juices - and envisaged the creation of a joint-stock company that would take over the assets of the 16 companies of the Parmalat group and pay their creditors. Regarding Parmalat's debts, the new company would pay its secured creditors (the inland revenue, workers, artisans etc.) in cash, while paying all others with shares proportional to their claims against one or more of the 16 companies. The Italian government also provided assistance with the solution by giving

creditor farm and haulage businesses, which had been affected by the crisis, access to credit on especially good terms.

On the 17th May 2004, Parmalat Finanziaria S.p.A. announced the corporate governance system of the New Parmalat in the document outlining the restructuring plan. The new system took into account the norms regarding company law, Consob's recommendations and the Code of Corporate Governance of the Italian Stock Exchange. It was also in keeping with the best national and international practices. The aim of the corporate governance system is to protect and create value over time for the shareholders and other parties concerned. This aim is increased to the rank of "statutory principle" due to the fact that it is placed among the duties of the institutions.

#### 4.1. The Corporate Governance of "New Parmalat"

Parmalat's corporate organization is based on the so-called Italian "conventional" model (shown in paragraph 2). The corporate governance model also includes a series of powers, delegations of power, and internal control procedures, as well as the Parmalat Code of Conduct, a Code of Ethics, the Internal Dealing Handling Code and the Organization, Management and Control Model required by Legislative Decree 231/2001. The Bylaws have a particularly significant role in the Parmalat corporate governance model because it acknowledges some of the best practices of corporate governance, such as the obligation to set up committees within the Board of Directors, the separation of the CEO and the Chairman and the fact that the majority of the Directors must be independent.

#### 4.2. Shareholder base

Parmalat, as mentioned above, was a family company with ownership concentration in only one person. On the contrary, "New Parmalat" is a company with a dispersed ownership that is a typical situation in the Anglo-Saxon and American companies. When defining the new governance rules it is necessary to consider that, if governance must be outlined taking into account the characteristics of the shareholders, it must also take into account that the structure of the public company was temporary as Parmalat was acquired by Lactalis in 2011. The shareholders listed in Table 3 below are believed to own, either directly or through representatives, nominees or subsidiaries, an interest in the Company that is greater than 2% of the voting shares.

Table 2. Shareholder with more than 2% of the voting shares

Shareholder	Percentage
FIR TREE INC.	2,287%
UBS AG	2,382%
MACKENZIE CUNDILL INVESTMENT MANAGEMENT LTD	2,348%
GOLDMAN SACHS ASSET MANAGEMENT L.P.	2,013%
INTESA SANPAOLO SPA	2,438%
JP MORGAN CHASE & CO. CORPORATION	3,026%
<b>Total shareholders with significant equity interest</b>	<b>14,494%</b>

Source: Consob – 27.10.2008

Shareholder	Percentage
MACKENZIE CUNDILL INVESTMENTS MANAGEMENT LTD	7,557%
BLACKROCK, INC.	4,945%

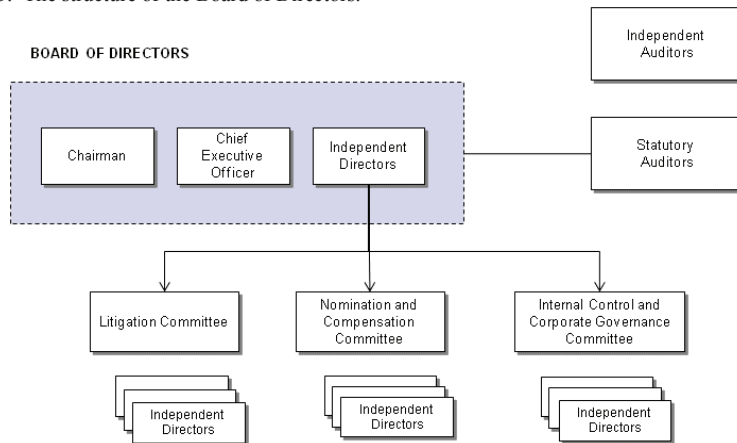
SKAGEN AS	5,009%
TOTALE GRUPPO INTESA S. PAOLO	2,321%
NORGES BANK INVESTMENT MANAGEMENT	2,023%
<b>Total shareholders with significant equity interest</b>	<b>21,86%</b>

Source: Consob – 18.08.2011

### 4.3. Board of Directors

The Company is managed by a Board of Directors comprising 11 Directors, who are elected from slates of candidates. Only shareholders who, alone or together with other shareholders, hold a number of shares equal in the aggregate to at least 1% of the Company’s shares that convey the right to vote at Regular Shareholders’ Meetings are entitled to file slates of candidates. The Bylaws that require a rather low threshold, necessary to be able to present a slate is equal to 1% and aims at making it easier for minority shareholders to present a slate. The Bylaws require that the appointment of two directors is assigned by the slate presented by the minority shareholders .

Table 3. The structure of the Board of Directors.



### 4.4. Chairman and Chief Executive Officer

The Bylaws establish that the Chairman of the Board of Directors is never allowed to combine his or her office with that of Managing Director . This is a significant aspect, as such a separation is established by the Bylaws and complies with best governance acknowledged on an international scale . Currently, at the time of writing this report, no management powers have been delegated to the Chairman of the Board of Directors and he does not perform a specific function in the development of Company strategies.

Table 4. Old and New Corporate Governance about the Board of Directors

Board of Directors	New Parmalat	Old Parmalat
Number of components of the Board of Directors	11 (the number of Directors established by the Bylaws)	The Bylaws established a number of between five and fifteen Directors
Election procedure	Slates of candidates. Threshold equal to at least 1% of the Company’s shares	The presentation of the slate was not required prior to the meeting
Process	Presentation at least 10 days beforehand:	Not established

	<ul style="list-style-type: none"> <li>• official acceptance of the candidates;</li> <li>• certification that there is no legal reason to prevent the election of the candidate;</li> <li>• certification of necessary requisites;</li> <li>• curriculum vitae.</li> </ul>	
Independent Directors	9 (at least 6 in compliance with the Bylaws)	3 (according to the statements found in the annual report on corporate governance)
Corporate Governance Posts	The same person may not serve both as Chairman of the Board of Directors and Chief Executive Officer	Allowed
Board Evaluation	The board evaluation process was carried out by requesting that all members fill out a questionnaire.	Not established

#### 4.5. Committees of the Board of Directors

The establishments of Parmalat Internal Committees, is governed by the Bylaws. This is important considering the fact that in Italy the creation of committees within the Board of Directors is not required by law but simply by the code of corporate governance. The rules governing the operation of the Committees are approved by the Board of Directors which can also integrated or modified them. The Board of Directors has established several internal committees that provide consulting support and submit proposals to the Board of Directors. The Board of Directors is informed about the activities of these Committees whenever a Board meeting is held.

These Committees are:

- Litigation Committee;
- Nominations and Compensation Committee;
- Internal Control and Corporate Governance Committee.

Table 5. Features of New Parmalat's Internal Committee

	<b>New Parmalat</b>	<b>Old Parmalat</b>
Internal Committees	The establishments of Internal Committees is governed by Bylaws. These committees are: <ul style="list-style-type: none"> <li>• Litigation Committee;</li> <li>• Nominations and Compensation Committee;</li> <li>• Internal Control and Corporate Governance Committee.</li> </ul>	The following had been set up: <ul style="list-style-type: none"> <li>• the Internal Control Committee</li> <li>• the Compensation Committee</li> </ul>
Compensation of the Board of Directors	The compensation of the Board of Directors is determined by the Shareholder's Meeting and does not change until the Shareholder's Meeting approves a new resolution.	The compensation of the Board of Directors is determined by the Shareholder's Meeting and does not change until the Shareholder's Meeting approves a new resolution.

The Litigation Committee, which comprises three independent Directors without executive authority provides consulting support to the Chief Executive Officer on litigation related to the insolvency of the companies included in the Composition with Creditors. The Corporate Counsel of Parmalat SpA attends the meetings of this Committee. The opinions rendered by the Committee with regard to individual issues in

litigation are also forwarded to the Board of Directors ahead of the meeting that has the issues in question on its Agenda.

The features of New Parmalat's Internal Committee compared with the previous ones are shown in Table 6 below:

Table 6. The Litigation Committee

	<b>New Parmalat</b>	<b>Old Parmalat</b>
Composition	Three independent Directors without executive authority	Not established
Nomination	The Bylaws establish that at least one of its members must be drawn from a minority slate	
Function	Provides consulting support to the CEO on litigation related to the insolvency of the companies included in the Composition with Creditors.	

The Nominations and Compensation Committee, which has three independent members performs a proposal-making function.

The features of New Parmalat's Nominations and Compensation Committee compared with the previous ones are shown in Table 6 below:

Table 7. The nominations and Compensation Committee

	<b>New Parmalat</b>	<b>Old Parmalat</b>
Composition	Three independent Directors without executive authority. The Bylaws establish that the majority of the members of this committee shall be independent Directors.	It was solely a Compensation Committee.
Nomination	The Bylaws establish that at least one of its members must be drawn from a minority slate.	It was composed of three members: two were independent and one had executive authority.

The Internal Control and Corporate Governance Committee, which comprises three independent Directors without executive authority (this composition is established by the Bylaws), performs a consulting and proposal-making function. Sessions of the Committee are attended by the Chairman of the Board of Statutory Auditors .

Table 8. The Internal Control and Corporate Governance Committee

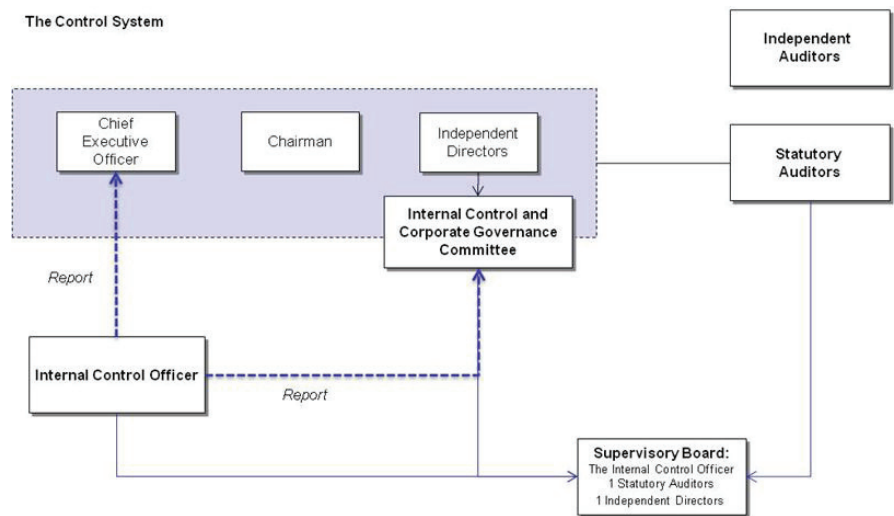
	<b>Old Parmalat</b>	<b>New Parmalat</b>
Composition	Three independent Directors without executive authority Sessions of the Committee are attended by the Chairman of the Board of Statutory Auditors.	Two were independent and one had executive authority.
Nomination	The Bylaws establish that at least one of its members must be drawn from a minority slate	By the Board of Directors

#### 4.6. Internal Control System

The Company's internal control system is designed to ensure the efficient management of its corporate and business affairs, to make management decisions that are transparent and verifiable, to provide reliable

accounting and operating information, to ensure compliance with the applicable statutes, to protect the Company’s integrity, and to prevent fraud against the Company and the financial markets in general.

Table 9. The Internal Control and Corporate Governance Committee



4.7. Independent Auditors

Parmalat auditor firm is one of a Big Four Company.

4.8. Manager in charge of preparing company’s financial report

The Manager in charge of preparing company’s financial report must have served as a corporate executive for at least 5 years and he had to work in the accounting or control area or served in another management function at a corporation with a share capital of at least 2 million Euros.

In addition he must meet the law’s standards of integrity and professionalism (these requirements are set out by the Bylaws).

4.9. Statutory Auditors

The Board of Statutory Auditors comprises three Statutory Auditors and two Alternates, all of whom are elected on the basis of slates of candidates to ensure that a Statutory Auditor and an Alternate are elected by minority shareholders . Only shareholders who, alone or together with other shareholders, hold a number of shares equal in the aggregate to at least 1% of the Company’s shares that convey the right to vote at Regular Shareholders’ Meetings are entitled to file slates of candidates .

Table 10. Statutory Auditors



Board of Directoris	New Parmalat	Old Parmalat
Number of components	3	3
Election procedure	Slates of candidates – Threshold equal to at least 1% of the Company’s shares	Slates of candidates – Threshold equal to at least 3% of the Company’s shares
Process	Chairmanship of the Statutory Board goes to the first candidate on the list that is second for the number of votes Presentation at least 10 days beforehand: <ul style="list-style-type: none"> <li>• official acceptance of the candidates;</li> <li>• certification that there is no legal reason to prevent the election of the candidate;</li> <li>• certification of necessary requisites</li> <li>• curriculum vitae</li> </ul>	Chairmanship of the Statutory Board goes to the first candidate on the list that is first for the number of votes Presentation at least 10 days beforehand: <ul style="list-style-type: none"> <li>• official acceptance of the candidates;</li> <li>• certification that there is no legal reason to prevent the election of the candidate;</li> <li>• certification of necessary requisites</li> </ul>

## 5. Conclusion

Our research reflects the currently hotly debated issue of corporate governance, which was recently sparked off once more by the crisis of the financial markets. Following the Parmalat crisis, there have been many changes to the laws and regulations and code of corporate governance in Italy, with the aim of strengthening the governance system of listed companies. In order to provide the restructuring process of the Parmalat group has been necessary to totally rethink the Corporate Governance since New Parmalat was born with the main objective of regaining the trust from the market that they had lost. This issue has generated an interest in the “Parmalat Case”, and is the subject of this paper, which highlights the main characteristics of the new governance model, identifying the numerous positive aspects which, in some cases, have been accepted by the legislator and integrated in the reform on the Savings Law. So this paper does not intend to analyze whether the Italian rules of Corporate Governance are a best practice in Europe, but aims at verifying whether the “New” Parmalat governance could be considered a best practice of governance in the Italian Corporate Governance system. Within the Italian listed companies framework it can thus be stated that New Parmalat’s corporate governance model has many of the characteristics that make it a best practice model. Moreover, each model can always be modified and improved upon, in order to optimise the costs in economic terms with the benefits. The simply complying with corporate governance rules does not automatically mean that the company is being run correctly. Good governance can be obtained by striking the right balance between compliance to the rules and attention to performance (Riccaboni A., Guindani P., 2008). In this framework, the financial community plays an important role, as Financial investors and market operators have to consider the monitoring of the short-term results to be not the only important aspect, as it is necessary in the meantime to evaluate the ability of the Company to create value in a long term period, following an ethical behavior, and satisfying the stakeholders’ interests (Riccaboni A., Guindani P., 2008).

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