ACRI Associazione di Fondazioni e di Casse di Risparmio Spa

DEVELOPMENTS IN THE LEGAL FRAMEWORK OF THE SYSTEM

FROM THE SAVINGS BANKS

Founded in the early nineteenth century, the Savings Banks were engaged in two areas. They were institutions pursuing both credit and charitable activities in their local communities. During the 1990s they were subjected to profound and radical changes that resulted in a significant reformation of their organisational, legal and institutional structures.

Prompted by the 1st and 2nd Directives on credit, concerning freedom of establishment and banking de-specialisation, the transformation and modernisation process of the Italian banking system gained momentum, and law no. 218 dated 30 July 1990 (the "Amato" law), was passed along with the relevant implementation decrees. Therefore in accordance with this law, the Savings Banks transferred their banking activities to ad-hoc joint-stock banking companies. (the new Savings Banks). Once this transfer had taken place, the original Savings Banks were converted to Foundations assuming all the socially-oriented and charitable tasks provided for by the statutes of the Savings Banks.

The new joint-stock Savings Banks are business enterprises governed by the civil code and the banking laws. They operate on an equal footing with all other banks operating in the credit sector. Around fifty of them have kept their names. The rest, on merging with other banks, changed their original names giving rise to some of the main Italian banking groups.

TO THE FOUNDATIONS

The Foundations are the entities that spun off the banking assets in accordance with the Amato Law of 1990. Originally, they were governed by the few provisions of legislative decree no. 356/90, which implemented the principles laid down in law no. 218/90.

Until 1994 the Foundations were required to maintain majority ownership of the joint-stock Savings Banks. Following the arrival of law no. 474/94, this requirement was repealed and tax incentives were introduced to encourage the Foundations to relinquish their shareholdings (the "Dini" directive in the same year). This fostered a diversification in ownership which enabled the joint-stock banks to achieve growth and a size adequate to the changed market scenario, while preserving their roots in local communities.

In 1998, with law no. 461/98 (a.k.a. the "Ciampi" law) and the subsequent application decree, no. 153/99, Parliament intended, on the one hand, to create the conditions for the completion of the restructuring process of the banking sector started with the "Amato" law and, on the other, to revise the civil and tax laws in relation to the Foundations. As a result of the reform implemented by the "Ciampi" law, the first stage ended with the approval of their bylaws by the Supervision Authorities (Ministry of the Treasury, now Ministry of the Economy and

Finances), the Foundations are private, non profit, autonomous entities, based on article 2 legislative decree 153/99.

While the "Amato" law required that the Foundations should maintain the majority ownership of the joint-stock Savings Banks, the "Ciampi" law established an obligation in the opposite direction : the Foundations were required to relinquish control of the banks. To encourage this course of action the "Ciampi" law included a proviso for the temporary suspension of the Capital Gains Tax on the disposal of the shares. This tax measure (which had been extended for four years after the coming into force of the application decree, 15 June 2003) remained effective until 31 December 2005.

By the end of September 2010, out of 88 Foundations, 18 no longer had direct investments in their respective spin-off banks; 55 had a minority share holding in their respective spin-off banks. The other 15 – which together accounted for 4.5% of the Foundations' total net assets – held over 50% of their respective spin-off banks, according to the derogation introduced in 2003 (art. 4 Law Decree no.143/2003, signed into Law no.212/2003, which replaced paragraph 3 bis, art. 25, Law Decree no.153/1999) for such Foundations which have net assets with a book value under €200 million in 2002 or are located in special statute regions.

Furthermore, law no. 212/2003 gave the Foundations the possibility to invest a certain percentage of their net assets in non-instrumental properties. This amount was initially fixed at 10% but a modification included in Article 52 of the Law Decree no.78/2010, increased the quota to 15%.

In 2011, with the decree dated 27 July, the Minister for Economy and Finance decided, as before, to extend to this year the ruling prescribed by the Law Decree 185/2008 which said that all entities not applying the International Accounting Standards – which includes the Foundations – were allowed to evaluate shares not expected to remain permanently in their Capital funds, at the value of their budgeted value "*rather than the realisable value indicated by the state of the market*".

In order to carry out all the provisions of the legislative decree no. 153/99, the Ministry of the Treasury, today known as the Ministry of Economy and Finance, (in its capacity as acting Supervision Authority for the Foundations) introduced a policy measure of a general nature on the amendment of the bylaws (Measure dated 5 August 1999) and one setting forth the guidelines to be followed by the Foundations in preparing their financial statements as at 31 December 2000 (Measure 19 April 2001).

At the end of 2001, law no. 448/01 was included in the Budget for 2002. With this law the Government amended the "Ciampi" reform significantly (article 11), modifying its substance represented, on one side, by the private nature of the Foundations and, on the other, by their management autonomy.

The Foundations have repeatedly expressed their disagreement with these provisions, and have been supported in this by many members of voluntary organisations, international organisations and representatives both of the political world and the cultural. Some voluntary organisations prepared a manifesto requesting recognition that the role of Foundations is

subsidiary to, not substitutive of, that of the public sector and that they continue to use contributions from civil society for their work.

The Courts reduced the impact of article 11 of law 448/2001 (budget law 2002) substantially, following a petition submitted by the Foundations. In fact, the Administrative Court (TAR) of the Lazio region advised that the cited article 11 was unconstitutional and, by ordinance no. 803/2003, it presented the case to the Constitutional Court to verify its compliance with the Constitution.

THE ROLE ACCORDING TO THE CONSTITUTIONAL COURT

The Constitutional Court pronounced rulings 300 and 301 on 29 September 2003, finally clarifying the role and identity of the Banking Foundations, which were at long last found to be composed of private, non profit, autonomous entities and characterised as fully-fledged "members of the organisation of a free society".

In short, the Constitutional Court:

- recognised that the legal developments started in the 1990s broke the "genetic and functional bond", "a bond that originally kept the Banking Foundations tied to the Original Banks. Moreover, it changed the legal nature of the former from public entity to private, non-profit, autonomous entity (article 2, paragraph 1, of legislative decree no. 153) whose nature is no longer defined by the controlling interest in the banking company or even by an equity investment in it;"

- has sanctioned the private nature of the Banking Foundations, reiterating that they fall within the competence of civil law and that, therefore, legislative responsibility over them rests with the State (article 117, second paragraph, sub-paragraph l) of the Constitution);

- declared unconstitutional the prevalence in the governing bodies of the Foundations of representatives from Regions, Provinces, Municipalities, metropolitan Cities (i.e. entities other than the State as per article 114 of the Constitution);

- ruled that, on the contrary, there should rather be a prevalence of qualified representatives coming from public and private entities as an expression of local communities;

- considered unconstitutional the use of administrative acts by the Supervision Authority designed to further reduce the autonomy of the Foundations, e.g. general measures or regulations intended to change the sectors where the Foundations can pursue their socially-oriented goals;

- defined the concept of joint control by different Foundations with equity investments in the same bank, indicating that such joint control indeed exists only if such Foundations have entered into a verifiable shareholder agreement;

- reduced the level of incompatibility of office for members of the Foundations' governing bodies, indicating that this applies only for positions in companies with shareholding ties with the original banks.

The rulings of the Constitutional Court, which are intended to define conclusively the identity of the Banking Foundations as private, autonomous and having the freedom of action to contribute to the development of a welfare society, have been transposed into the implementing regulation (Ministerial Decree no. 150 dated 18 May 2004) of law no. 448. This regulation ended the long period of uncertainty that had affected the Foundations' operations, enabling them to display the full effects of the role they play in the local communities and in the entire national community.

In conclusion, the evolution of the Foundations of banking origin which started in 1990 – the year of their birth – has enabled them to take their place in society today, definitively as privately governed organisations.

The amendment (Law no.122 30th July 2010) to Article 52 (Law decree no.78/2010) clarifies that the legal supervision of the Foundations of banking origin will remain allocated to the Ministry of the Economy (see Article 10 of Law Decree no. 153/1999 aka the Ciampi Law) until a radical reform has taken place within the sphere of private, non profit, autonomous bodies (Chapter II of Book I of the Civil Code) resulting in a new appointment to the role of Legal Supervisor. Those Foundations who maintain control, either directly or indirectly, of banking societies will remain under the supervision of the Ministry of the Economy, even after the appointment of a new supervising authority.

The same amendment to Article 52 calls on the Ministry of Finance to provide Parliament, as is required of all such supervising authorities, with a full report (annually and by June 30th) outlining all the activities carried out by the Foundations of banking origin during the preceding year, *"with full reference to the activities directed at socio-economic development within the areas local to each Foundation."*