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CaixaBank

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Introduction

Looking back at the last ten years in Spain, the financial crisis starting 2008 leaves a long track of corporate failures, a staggering unemployment rate, collapses in banking, and financial markets that only left standing the banks that were too big to fail. The crisis has not only triggered political instability, moreover it has weakened people's faith in the financial systems, corporate management, monitoring and the integrity of markets[1]. Gaining the trust of any Spaniard is now of the essence for any bank wanting to stay in business. In short, the significance of responsibility in corporate governance is more vital than ever. One can only speculate of what may happen in the future. CaixaBank is doing their best to keep a transparent and credible rapport with their stakeholders but the last few weeks is putting them to the test.

The primary focus of this report will not lie with the current Spanish macro environment from an external point of view, it will however to a greater extend utilize the immediate situation in Catalonia to discuss and reflect upon the corporate responsibility, considerations and challenges that a financial entity as CaixaBank faces in governing within the complex nexus of interconnected legal-, economic-, political-, social- and psychological dimensions build through contractual and social relationships. In a time of national crisis. By treating the current Spanish events as a sample of political instability and challenges, this paper thus intends to reflect upon the question: *How does a corporation operate responsibly in the best interest of a wide net of shareholders and stakeholders on different macro- and micro levels when being jammed in between two politically juxtaposed forces?* In other words, the scope of this paper is to identify the overarching corporate governance challenges that may arise and through reflection analyse how CaixaBank responsibly responds to them when being so interconnected to other sectors of the economy. Furthermore, the limitations to this paper is in fact present as the specific political condition is still ongoing, which is why it will be significantly interesting to follow in the future.

In order to support the scope of this paper and argumentation, the analysis will draw upon relevant corporate governance theories, notions and frameworks as tools to explain the governance and behavior of CaixaBank. It will further address the challenges that CaixaBank faces on both a micro and macro level to keep a clear, logical structure on multiple taxonomic levels.

Company overview

By primarily providing financial services and products to individuals and businesses, CaixaBank S.A is the third biggest bank in Spain measured on total assets[a] and a key agent in the country's economy, where it would like to be "*(...) known for its financial strength, dedication to personal ties (...) with a long-term vision and a notable social commitment. The bank consistently strives to maximise its contribution to the country's economy, establish stable and trustworthy relationships with the environment and contribute to*

[a] 24,375232 thousand euro (See CaixaBanks 2017 Financial Statement)

solving the most urgent social challenges and the transition to a low-carbon economy."[2], which is highly interesting in the perspective of the current Spanish setting. The Catalan market which currently accounts for 61.766 mil. Euro of CaixaBank's business out of their 282.036 mil. Euro on a national plan, thus equal to 21.9%[3].

Diving into the values and identity of the CaixaBank, a recurring core vision is the banks responsibility, that be both on a micro and macro level towards shareholders and stakeholders. Through the past 10 years of the company's history the current monitoring in the macroeconomic environment[4] aligns with the vision that the holding company "la Caixa" Foundation has in terms of value based management and long-termism to both business and social commitment[5].

Analysis of ownership structure and board

The general ownership structure of CaixaBank is based on a concentrated ownership of which 40% of the single class stock are owned by CriteriaCaixa which by structure is 100% possessed by "la Caixa" Foundation (Appendix 1). Smaller investors thus accounts for 60% of the stock, where the second largest owner of stock is BlackRock, Inc. (NYSE:BLK) holding 180,215,128 of Common Stock Equivalents matching 3.015% of the common shares outstanding (CSO) and all other investors possess >1,68% of CSO[6]. Aligning with CaixaBanks one-share one-vote principle, as a formal mean to protect minority shareholders and fostering of informed participation, this concentrated ownership structure is typical for banks. It allows CaixaBank stronger monitoring power over firm's managerial decisions. Even though the sector specific monitoring powers (both on an intergovernmental and supranational level) decreases the risk of agency problems that could for example be featured in the fact that the board does not include any workers on the board, though this is not unusual for banks. However, it also reflects a low codetermination between stakeholders (employees) and the board.

CaixaBank has a one-tier board structure with separation of chairman and CEO. The board of directors depicts a significant amount of diversity, independence and gender equality (which may be an effect of the *Constitutional Act 3/2007 of 22 March for effective equality between women and men, Juan Carlos, I King of Spain)*. As it features 16 members (a common size board for a bank) of which 8 are independent, the board has a highly appropriate composition with respect to the EU recommendations of independency and thus plausibly efficiency and long term value creation[7]. This also allows decrease type 3 agency problems. The transparency fulfils the *"Comisión Nacional Del Mercado De Valores: Good Governance Code of Listed Companies",* which not only marks it a key driver the strengthening of investor trust in Spain, but also touches upon the intended standard of having at least a 30% women representation on boards in Spain by 2020, which CaixaBank almost lives up to by now[8]. Empirical studies have shown that this may be of good purpose as women in boards identifies valuable characteristics as tougher monitors than male directors and more long-term oriented (See Adams & Ferreira, 2009). Especially remarkable is the formal responsibility

CaixaBank's governing body takes in form of committees (Appendix 2) concerned with enhancing monitoring and supervisory, which the *IMF Country Report No. 17/321 of Spain* recommends. This can be seen as a proactive take on the many governance distortions that financial firms may encounter.

Macro and Micro Dimension Analysis

The following analysis will not only touch upon how CaixaBank is currently governed to act responsibly on both a macro and micro level - it will also reflect upon managing the interests in a complex situation.

Macro setting

On a macro level, corporate responsibility and responsible governance in the financial sector cannot possibly be reduced to presenting and complying to truthful financial reporting, transparency and carrying out the core functions of the business. What many scholars have argued pro[9] has been proved obvious by current happenings. Businesses should clearly act in shareholders' best interest though in a bigger picture also be governed to meet the expectations of stakeholders and the democratic societies in whose setting they operate – expectations that often are capsuled by softlaw. CaixaBank's vision of corporate responsibility can thus be analysed in relation to the actions taken of moving their legal and fiscal HQ out of Catalonia as a response to the expectations of enhancing the mutually dependent relationship between business (shareholders) and society (stakeholders) as a way of hedging through the legal framework. Above all is the importance of manoeuvring within the strict grid of various legal regulations of financial markets within the codex of Spanish civil Law and the EU regulations. Setting evermore rigorous control mechanism as a result the systemic downfall of the financial markets in 2008.

When discussing corporate governance of CaixaBank in an economic societal responsible context, it inarguable holds a significant importance due to its size in Spain and Catalonia[b], but also in its sector. The governance responsibility of a major bank is comparably more complex, closely monitored and regulated in respect to any other sector. Taking the interests of minor stakeholders (individuals, small businesses, debtholders, accountholders) and major stakeholders (SME and large enterprises, the Spanish government, the financial system) into account in an agency perspective is responsible corporate governance; as the systemic consequences of not doing so has historically proven catastrophic. This is in particularly fundamental in the light of the present Spanish macroeconomic situation as well as political challenges. It is accentuated by the past financial lessons as well as the hard fact that Catalonia accounts for a fifth of Spain's economic output[10]. Consequently, CaixaBank is strategically safeguarding its stakeholders exercising due diligence when moving its highest corporate governance bodies - legal and fiscal headquarters - to Valencia in order not to "(…) *find [itself] outside the eurozone and cut off from* [Spain and the] *European Central Bank's emergency liquidity facilities."*[11]. In other words, if CaixaBank stayed in Catalonia it would be hit

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[b] Especially as *"Caixabank is Catalonia's biggest company by market value and accounts for around 50 percent of the region's banking sector"*[10a].

hard by a separation from both the Spanish government's deposit guarantee fund and EU regulations, safeguards and emergency liquidity reserves, which could have major long term implications for stakeholders and the market as such. If this were to be the case, they could potentially lose the direct right to business and the free flows of capital across the European Union; a substantial part of not only its business, but a major role in the financial system of Spain and Catalonia. It can thereby be explained that CaixaBank operates in a responsible way as per *Recommendation 45 of Comisión Nacional del Mercado de Valores: Good Governance of Listed Companies report* on risk and control management policies which recommends CaixaBank to mitigate the impact of identified risk events should they occur – this be with a macroeconomic view and financial stability in mind. Thus, it can be argued that CaixaBank on a macro level exercises a role of ethical corporate governance and responsibility in risk containment and failure avoidance to pursue and maintain both the health of Spanish markets needed for economic recovery, development and growth, but also for the banks own well-being. Post the financial crisis, rebuilding will require both corporate and government initiatives. CaixaBank is thus from a macro environmental perspective adapting to the political situation and uncertainty as a mean to protect the values and interests of the shareholders and stakeholders from political and social instability and its potential detrimental effect on the banking sector and economy. In short, operating under the pressure and requirements such a macro environment triggers a direct effect on how CaixaBank must navigate due to potential economic risks and its responsibility as leading bank with a long-term perspective. What is also interesting is the way the Spanish government facilitates the events by providing the right law making right on time and in a timely manner.

<u>Micro setting:</u>

In both a historical, sociological and psychological perspective, the social image and status of CaixaBank as a Catalonian bank has its implications on the emotional values CaixaBank would like to convey. On a micro level the factors embodies a fear of CaixaBank leaving stakeholders behind, a fear which could be explained by post financial crisis and still high Spanish unemployment. Trust is a definite issue. CaixaBank however tries to vaccinate for these basic governance problem/agency problems as it "(…) *has signaled its concern on Tuesday, in a communication to staff telling them to reassure clients about "our commitment to the defense of their interests" (...) "reiterated that the sole objective of the entity is to protect at all times the interests of its customers, shareholders and employees, guaranteeing the integrity of deposits".*[12] CaixaBank thus faces basic identity problems in the Catalonian market that it needs to address as "(…) *they don't want clients in Madrid to see them as Catalan banks, nor clients in Barcelona to see them as Spanish banks."*[13]. If the Catalonian independence becomes a reality, CaixaBank faces the challenge that clients and stakeholders in the Catalonian market (21.9% of CaixaBank's business) will feel detached to the new Spanish identity of CaixaBank. Through Spanish media sources[14], one can detect that there may have been a withdrawal of deposits and accounts provoked by two reasons: Firstly, the boycott of many clients who did not want to have their savings in a Catalan bank considering that they supported Catalonian sovereignty. Secondly of the fear that, in case of independence, it would lead to frozen accounts. Though from a critical perspective, official sources from CaixaBank deny that these data are completely accurate, it does reflect the notion of the image issue that CaixaBank has had to consider when operating.

On a more formal note, the fact that the implications of the new changes of Article 285 of the Spanish Capital Companies Act, is plausibly a violation of the rights of shareholders and deepens a lack of democracy in listed companies, which meant that CaixaBank could surpass a general assembly when deciding to relocate headquarters; thus, could both a type 2 and 3 agency problem arise. As such one could ask oneself, if CaixaBank governs responsibly in moving its headquarters and not consulting with the general assembly first? Or is the illusion of influence with a core ownership of 40 percent from CriteriaCaixa evident?
This way of surpassing could lead to a situation interpreted as undertaking actions that undermines the "one-vote one-share"-values from the rest of the minority shareholders[15] (type 2). In spite of the obvious advantages to shareholders to contain the risk and limit the damage. The stand CaixaBank takes that also has been interpreted as political keeps every shareholder from making their vote count. This agency problem aligns with the Spanish minority shareholder protection laws which is described as having only a 6,5 score[16] on The World Bank, Measuring Business Regulations database. From a shareholder/stakeholder perspective (type 3), one could argue that as CaixaBank[c] politically sends the message that it does not support potential independence. This reflects the cooperate governance challenges that CaixaBank faces on a micro level. The behaviour and riots of the separatists has strong historically intrinsic value to the Spanish people and the strong nationalist sentiment and divergence within the Catalan nationalists seems to rule the agenda more so than economic risk containment.

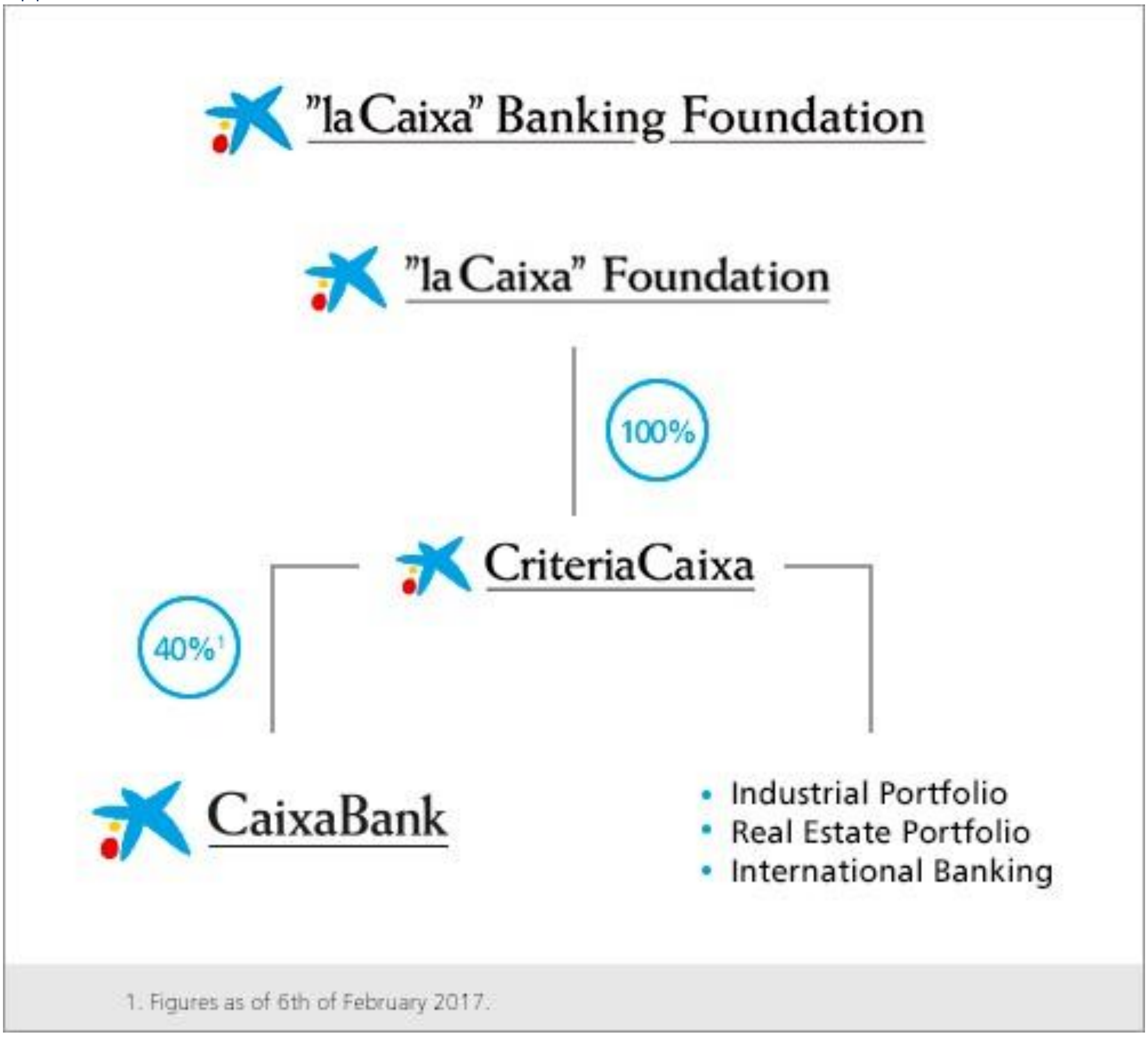
Concluding reflection

With the purpose of pursuing stakeholder and shareholders best interest, banks in the modern society are not only obliged by laws, regulations and best conduct-codes when it comes to principles of responsibility, ethics, and common good practise. CaixaBank's intertwined and significant roots in society entails that its own legitimate interests of value maximizing for its shareholders, but in a broader picture to act responsibly in its activities towards the broader community and in the extreme; the global financial markets. The corporate governance challenges that CaixaBank is facing has become more complex in today's global economy. CaixaBank as any other bank is operating in a legal, economic, political, regulatory, social business sphere – and matters has only become more amplified during the last ten years. The challenges of CaixaBank in macro and micro conflicts of interests are many. But in this case the immediate common interest is to contain the risk and then damage control. In the aftermath of a political upheaval, the economic casualties will be many and asymmetrically distributed and the board must deal with the consequences on a day to day basis within the set boundaries of the corporate governance structure. Transparency and trust are of key importance in corporate governance in the share interests of shareholders and stakeholder in the world of uncertainty and asymmetric information.
If article 155 is not to be exercised and Catalonia gains independence; then better safe than sorry.

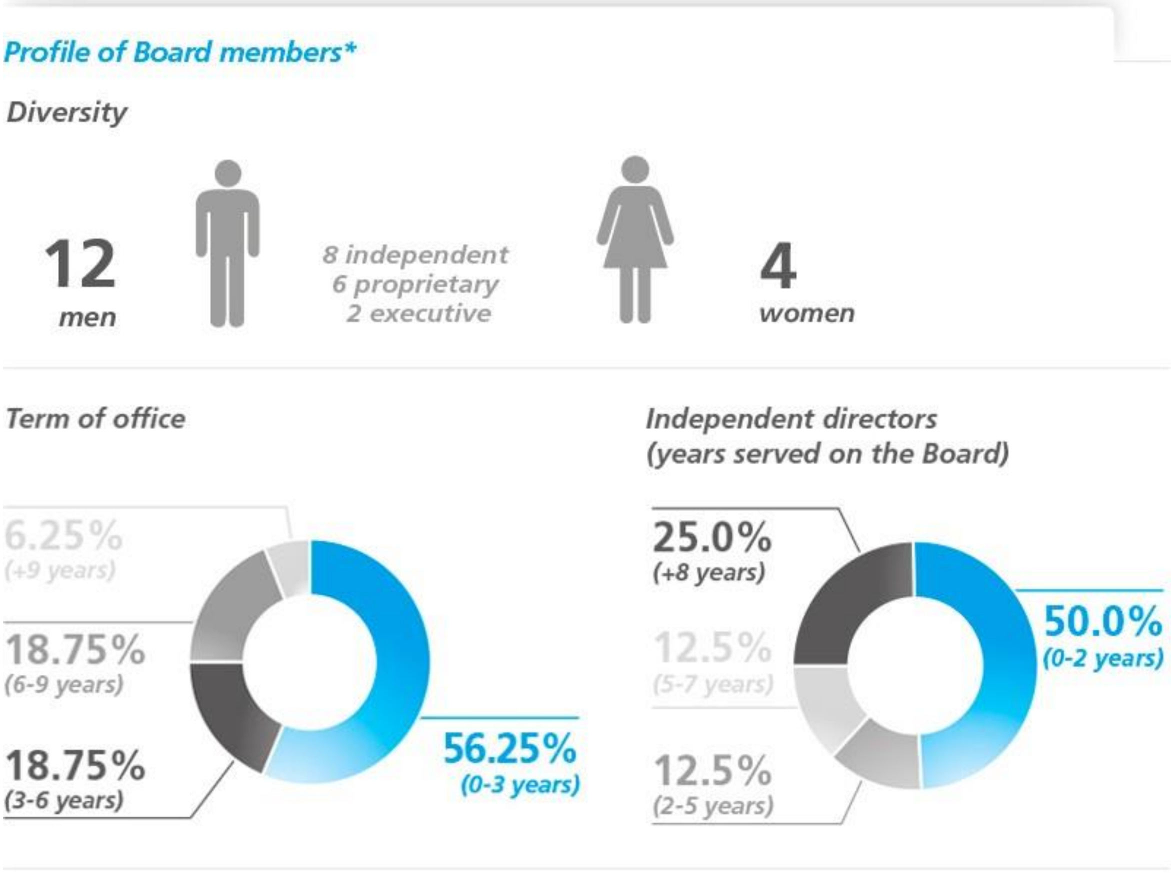
[c] Together with the 805 companies who has decided to move headquarters out of Catalonia since October 2nd.

Appendix:

Appendix 1



Appendix 2



* Uninterrupted, and at the 2016 year end. There were two vacancies on the Board at 31 December.

References

[1] Academic Research: Mathias Dewatripont and Xavier Freixas: *"The Crisis Aftermath: New Regulatory Paradigms"*, Centre for Economic Policy Research (CEPR), 2012

[2] See Caixa Bank Socio- Economic Impact Report 2016, page 1

[3] Article: Angels Gonzalo Alconada: *"The Banking Exhibition in Catalonia".* CincoDias, 2017

[4] See Banco de Espana Eurosistema, Financial Stability Report 05/2017

[5] What Do We Know (and Not Know) about Industrial Foundations. Steen Thomsen, Center for Corporate Governance Copenhagen Business School Draft August 8, 2012

[6] S&P Capital IQ; CaixaBank, S.A. (BME:CABK): Company Information report

[7] The EU Corporate Governance Framework, Brussels, 5.4.2011

[8] Article: "*La presencia femenina en los consejos del Ibex 35 crece hasta el 21,8%",* Agencia EFE, 2017

[9] See E. Smith, University of Pennsylvania *"Defining Corporate Social Responsibility: A Systems Approach For Socially Responsible Capitalism*"

[10] Article: Arnau Busquets Guàrdia, "*What Spain has to lose from Catalan independence"*– POLITICO, 2017

[11] Article: Max Colchester, *"Major Spanish bank to move out of Catalonia",* MarketWatch, 2017

[12] Reuters Financials, "*Caixabank says will protect clients', shareholders' and employees' interests",* 2017

[13] Article: Katie Linsell, Esteban Duarte, and Rodrigo Orihuela, *"Catalonia's Banks Prepare to Move Amid Fears of Customer Exodus"*, Bloomberg Markets, 2017

[14] Article: Agustín Marco, *"CaixaBank y Sabadell pierden 9.000 millones en depósitos por el desafío independentista"*, El Confidencial, 2017

[15] Michael C. Jensen and Eugene F. Fama *"Foundations of organizational strategy"*, Harvard University Press, 1998

[16] The World Bank, Measuring Business Regulations database, visited 19th of October.
http://www.doingbusiness.org/data/exploreeconomies/spain/protecting-minority-investors

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[a)] See CaixaBanks 2017 Financial Statement

[b)] Article: Carlos Ruano, Andrés González, *"Spain to make it easier for firms to move base from Catalonia as business alarm deepens"*, Reuthers, 2017

[c)] Article: Europa Press, *"El Congreso convalida el decreto para agilizar el cambio de sede social de las empresas*", Invertia, 2017