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# Adequate organisational structures under Article 2086 of the Italian Civil Code: organising the business to govern risk and prevent liability

## From the 2026 reform to the liability judgment: adequate organisational structures as an instrument of corporate governance.

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Abstract

The reform of the governance of joint-stock companies (Legislative Decree No. 47 of 27 March 2026) brings back to the centre of the debate the role of adequate organisational, administrative and accounting structures, which the new Article 2380-bis of the Italian Civil Code expressly places among the exclusive duties of directors. This contribution reconstructs their function — not an emergency safeguard, but a «dashboard» of the business to be used while the company is still *in bonis* — and their impact on the scope of the Business Judgment Rule: the absence of a suitable information system makes it far more difficult to claim that managerial decisions are beyond review. The analysis then addresses the causal link between the failure to set up such structures and recoverable damage, the role of non-executive directors and of the supervisory body, and the limits of D&O policies, which cannot replace a proper organisation of the business. The argument is that Article 2086 of the Italian Civil Code is today not only a rule for preventing crisis, but one of the main instruments of sound corporate governance in contemporary business.

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Legislative Decree No. 47 of 27 March 2026 has significantly intervened in the rules on the *governance* of joint-stock companies and has brought back to the centre of the debate a topic that, in some respects, still seemed to be left open: **the role of adequate organisational, administrative and accounting structures in the proper management of the business**. «It was all already foreseen», sang a well-known author. The provocation, in this case, certainly starts from a precise legal fact. Indeed, as is widely known, the duty to establish adequate structures — which requires an entrepreneur operating in corporate or collective form to equip themselves with an organisational, administrative and accounting structure proportionate to the

nature and size of the business, also for the purpose of the timely detection of crisis and of the loss of business continuity — does not originate with the 2026 reform, but is grounded in Article 2086, paragraph 2, of the Italian Civil Code, as reshaped back in 2019 by the implementing reform of the Business Crisis Code (Legislative Decree No. 14/2019 and subsequent amendments).

## 01 The 2026 reform: organisation becomes part of the managerial function

The novelty introduced by Legislative Decree No. 47/2026, which is anything but merely a matter of wording (for the reasons set out *infra*), brings back to the surface the question of the usefulness of this instrument or dashboard, which is perhaps still little known and little applied. The new Article 2380-bis of the Italian Civil Code expressly states today that the «*management and organisation of the business*», including the establishment of the organisational, administrative and accounting structure, are the exclusive tasks of the directors. In other words, the legislature definitively places organisation within the managerial function, clarifying that a director is not only the person called upon to take managerial decisions, but also the person who must put in place the organisational and informational conditions necessary for those decisions to be taken in a conscious, timely and verifiable manner.

## 02 The «dashboard» of the business: effectiveness of the model and the Business Judgment Rule

Reducing adequate structures to a safeguard — or worse, to a box-ticking exercise — to be activated only when the first signs of crisis appear means, on closer inspection, misunderstanding their function. The model set out in Article 2086 of the Italian Civil Code is meant to operate above all while the company is still *in bonis*, that is, at the moment when effective room still exists to plan, correct and steer management. An adequate structure should allow the board to have reliable information on the company's economic, equity and financial performance, on available liquidity, on the sustainability of debt, on the main due dates, on the quality of receivables, on the profitability of the different business areas and, more generally, on the factors capable of affecting business continuity. In other words, it is a genuine «*dashboard*» of the business (that is, a powerful instrument in the director's hands, capable of detecting in good time the unfolding of an economic crisis of the company and of taking decisions consistent with the data actually available) and not a bureaucratic superstructure.

A decisive element in obtaining a «*good Article 2086 model*» — one that withstands stress-testing — revolves around its degree of effectiveness. The adequacy of the model must in fact be assessed in concrete terms, in the light of the nature, size, complexity and specific risks of the activity carried out. The legislature does not impose a uniform model or a standard prototype: it is enough that the purpose of adequate structures is effectively pursued. For this very reason, the case law brings the choice of structures within the scope of managerial discretion, recognising that directors have a margin of discretion, provided that the solution adopted is rational, proportionate and preceded by the checks and information required by the nature of the appointment (*ex multis*, Italian Court of Cassation No. 36365/2021; Court of Catania No.

3168/2023). Such a premise cannot fail to have an impact on the *Business Judgment Rule*, that is, on the case-law criterion for attributing and assessing a director's liability. Indeed, the *Business Judgment Rule* protects the director's discretion where a choice has actually been made, based on an informed and reasonable decision-making process. It is, by contrast, far more difficult to invoke the immunity of managerial decisions where no system capable of providing the board with the information needed to govern the company exists at the outset. It is precisely on this ground that Article 2086 of the Italian Civil Code is acquiring growing relevance in liability actions against directors. The Italian Court of Cassation has stated with particular clarity that the growing centrality of organisational structures affects the scope of the *Business Judgment Rule*: the total failure to adopt organisational measures may amount to a breach of the duties of the management body, whereas, where a structure does exist, the judicial assessment must focus on its suitability, according to criteria of proportionality and reasonableness (*ex multis*, Italian Court of Cassation No. 36365/2021).

## 03 From the decision to the damage: proving causation

The principle is significant because it shifts the centre of gravity of the liability assessment. The focus is not only on the individual decision taken by the director, but also on the quality of the system through which that decision was prepared. From this perspective, budgets, financial *reporting*, management control, authorisation procedures, receivables monitoring, treasury management and early-warning systems cease to be mere managerial tools and become relevant elements in the verification of proper management.

A particularly effective example is found in a recent ruling of the Court of Naples, which, in examining the damage arising from the late payment of tax obligations, observed that the directors should have organised the company's financial management in such a way as to avoid the incurrence of penalties and interest. Liability is therefore not linked solely to the failure to pay, but also to the absence of financial management capable of planning due dates and preventing the aggravation of the debt (*ex multis*, Court of Naples No. 10159/2026).

It must nonetheless be stressed that the failure to set up adequate structures may amount to a breach of managerial duties, but does not automatically entail liability to compensate. A liability action remains an action for damages, so it is necessary to prove not only the breach of duty, but also the existence of concrete financial harm and its direct causal link to the director's conduct (*ex multis*, Court of Appeal of Ancona No. 729/2026). The real procedural issue therefore becomes causation: it is necessary to establish what information an adequate structure would have made it possible to obtain, when the critical issue would reasonably have emerged, what step could have been taken and what part of the damage would have been avoided or contained.

## 04 Not only chief executive officers: corporate controls, D&O policies and sound governance

Adequate structures do not concern the chief executive officer alone. The issue involves the entire board of directors and, more generally, the company's control system. The case law has

repeatedly clarified that a non-executive director, while not bearing a general duty of supervision such as to make them a guarantor of the executives' conduct, is nonetheless required to act on an informed basis and to take action when elements capable of signalling critical situations emerge. It is therefore not enough to wait passively for the reports of the executive directors where, given the nature of the appointment or the specific expertise held, there are elements requiring further investigation (*ex multis*, Italian Court of Cassation No. 12108/2020; No. 10288/2024). The same logic is reflected in the role of the supervisory body. The supervision of the statutory auditors cannot be exhausted in a merely formal check of the documentation prepared by the directors, but requires, where necessary, the effective exercise of the information, inspection and reaction powers conferred by law (*ex multis*, Italian Court of Cassation No. 31753/2024). What emerges is a picture in which the quality of the structures is relevant not only from the standpoint of business efficiency, but also from that of the correct delimitation of liabilities. A well-built organisational system in fact makes it possible to establish with greater precision what information was available, to whom it was transmitted, what assessments were carried out and what initiatives were taken.

Ultimately, the function of adequate structures must be read from a twofold perspective. On the one hand, they are an instrument for governing the business. They allow directors to monitor the performance of management, anticipate imbalances, assess financial sustainability in good time and take decisions while real room for intervention still exists. On the other hand, they are a significant safeguard also from the standpoint of the liability of corporate bodies. A properly organised business does not, of course, eliminate the risk of a negative business choice; it does, however, make it possible to demonstrate that the choice was taken on the basis of reliable information, through a decision-making process consistent with the duties imposed by law. D&O policies must also be placed in this perspective. They can certainly represent an important instrument of financial protection for directors and officers, but their operation depends on the specific contractual conditions, on the exclusions provided for and on the nature of the claim. They cannot therefore replace a proper organisation of the business, nor be regarded as a general shield against the consequences of *mala gestio*.

The 2026 reform, then, does not invent the principle of adequate structures. It makes it, however, even more evident and operational, by expressly including organisation among the fundamental tasks of the director. Managing a business does not mean only taking decisions, but building and maintaining an organisation capable of providing, in useful time, the information needed to take them correctly. It is in this sense that Article 2086 of the Italian Civil Code can be regarded not only as a rule for preventing crisis, but as one of the main instruments of sound *governance* of the contemporary business.