

BUSINESS CRISIS AND GOVERNANCE

Adequate arrangements

from legal duty to proof of effectiveness

Article 2086 of the Italian Civil Code, the Business Crisis and Insolvency Code, and how Digit Audit Cooperative supports those charged with governance

AUTHOR

Domenico Merlino

Senior Partner

PUBLISHED

21 October 2026www.linkaudit.it**Link Audit S.r.l.**

Registered office: Via E. Notarbartolo 35, 90144 Palermo, Italy

VAT no. 06218630827 · REA PA-306103 · Register of Statutory Auditors no. 169403

PEC amministrazione@pec.linkaudit.it · www.linkaudit.it

Independent member firm of

INTEGRA INTERNATIONAL®
YOUR GLOBAL ADVANTAGE

BUSINESS CRISIS AND GOVERNANCE

Adequate arrangements: *from legal duty to proof of effectiveness*

by **Domenico Merlino** · 21 October 2026

Having adequate arrangements in place is no longer enough. A company must be able to show, at any time, that those arrangements exist, that they are proportionate to the business and that they actually work. This is the evidence against which the diligence of directors and control bodies is now measured.

A duty that applies to every company

The second paragraph of Article 2086 of the Italian Civil Code requires every business run in corporate or collective form to set up organisational, administrative and accounting arrangements that are adequate to its nature and size, also with a view to detecting a crisis and the loss of going concern in good time. Article 3 of the Business Crisis and Insolvency Code sets the benchmark: the arrangements must make it possible to verify the sustainability of debts and the going-concern outlook for at least the following twelve months.

The legislator has thus asked companies to move from reactive to forward-looking management, built on budgets, cash-flow plans and indicators. For many SMEs this is a cultural shift even before it is an organisational one.

The numbers show how topical the issue is. According to the Unioncamere Observatory, crisis proceedings opened in Italy in 2025 came close to 13,500, up 15.5% on the previous year, including 9,869 judicial liquidations. In the same year, applications for the negotiated settlement procedure (*composizione negoziata*) rose from 1,048 to 1,776: more and more companies are trying to act while the crisis is still reversible. But acting in time presupposes noticing in time.

What the courts look at

The law does not define adequacy and leaves it to a proportionality test. It is the courts that give it substance. In January 2022 the Court of Cagliari held that failure to adopt adequate arrangements is a serious management irregularity even in a company that is not in crisis, and appointed a court administrator. Other courts have moved in the same direction, going so far as to regard the omission as even more serious when the company is in equilibrium, because that is when corrective measures are effective.

In October 2024 the Court of Brescia, by contrast, dismissed a shareholder's complaint. The notion of adequacy is flexible, it does not demand perfect tools, and the shortcoming must be serious, current and potentially harmful. What proved decisive in that case were the periodic, documented checks carried out by the board of statutory auditors, which confirmed that the existing arrangements were fit for purpose.

The lesson is a single one. The business judgment rule protects organisational choices that are reasoned and documented, not the absence of choices. Those who have formalised their arrangements and tracked how they operate have a defence; those who have not must reconstruct one after the fact.

Three sets of arrangements, one common matrix

Professional practice distinguishes three levels, which must be read together and built starting from a risk assessment.

ARRANGEMENTS	WHAT MUST EXIST AND BE AVAILABLE ON REQUEST
Organisational	Organisation chart and role descriptions, powers and delegations consistent with responsibilities, skills suited to each role
Administrative	Written procedures shared with staff: collections and credit recovery, suppliers, cash-flow budget, periodic reporting
Accounting	Up-to-date accounts, interim financial statements, ratios and indicators, income and cash budgets with a six-month cash-flow forecast

The same risk and control matrix also serves other safeguards: the organisational model under Legislative Decree 231/2001, the process mapping required of listed companies, and tax risk control. Well-built arrangements respond to several sets of rules with a single framework.

The crux is effectiveness

An organisation chart that was approved and never updated, or a procedure that was written and never applied, will not withstand scrutiny. Effectiveness is first and foremost the responsibility of the management body. The board of statutory auditors oversees the adequacy of the arrangements and how they operate in practice; the statutory auditor, for its part, must report in writing when the conditions for crisis or insolvency arise. Each must be able to document what was done, when and with what outcome.

Spreadsheets, scattered minutes and shared folders are not enough: they carry no reliable date, leave no trace of who did what, and do not talk to each other.

The Digit Audit Cooperative answer

Digit Audit Cooperative is the platform developed by Digit Audit, licensed to Link Audit and used exclusively in its own engagements to document the existence of the arrangements and their operation over time. It grows out of twenty-five years of experience in auditing and advisory work and brings everyone involved in governance into a single environment.

NEED	HOW DIGIT AUDIT COOPERATIVE RESPONDS
Formalise the arrangements	Guided assessment of organisational, administrative and accounting arrangements, with a reasoned conclusion on each individual control
Bring weaknesses to light	A list of the issues to be put to the management body and of the improvement points to follow up at the next review
Check that controls are applied	Questionnaires sent to the owners of key controls, with a request for supporting documents
Give evidence of oversight	Dedicated areas for the board of statutory auditors and the Supervisory Body to record their respective work
Meet deadlines	Automatic check of the dates scheduled for periodic reviews
Prove what has been done	Signature and date on every completed activity, time-stamped archives, full PDF report

An example makes the point. If treasury monitoring is assigned to the chief financial officer on a monthly basis, the platform records that it was performed and how its adequacy was assessed. If the frequency is annual, in a company of a certain size the control is judged inadequate, the issue is put to the management body and the decision that follows stays on record.

The tool does not replace the judgement of directors, statutory auditors and external auditors. It makes that judgement shared, traceable and defensible, which is why Link Audit offers it together with its own professional support.

Adequate arrangements are a legal obligation. Demonstrated day by day, they become the most concrete way to govern a business and protect its continuity.

Domenico Merlino

Chartered Accountant and Statutory Auditor · Senior Partner, Link Audit

This article draws on the author's Project Work for the second-level Master's degree in Law and Management of Business Crisis (UnitelmaSapienza, academic year 2024/2025). Figures on proceedings are taken from the Unioncamere Observatory on business crisis, year 2025.

All rights reserved

© 2026 Link Audit S.r.l. All rights reserved. This article is the property of Link Audit S.r.l. and is made public for information purposes only. Reproduction, in whole or in part, modification and distribution by any means are prohibited without the written authorisation of the Company. Digit Audit is a registered trademark; other trademarks mentioned belong to their respective owners.