

The Entrepreneur's Liability, The importance of contractual institutions

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Abstract

As is well known, corporate crisis represents a critical - though no longer fatal - moment in a company's life, during which directors and, more generally, entrepreneurs are called to play a decisive role in managing the situation and adopting the most appropriate solutions to ensure business continuity or an orderly liquidation. Italian legislation primarily adopts a judicial approach - despite the introduction of the negotiated

settlement tool - in managing corporate crises, involving the court in various stages of insolvency proceedings, such as preventive arrangements with creditors and judicial liquidation (formerly bankruptcy). Therefore, directors are subject to strict oversight and management obligations, with potential civil and criminal liabilities in cases of negligent or omissive conduct.

In Spain, by contrast, corporate crisis regulation appears to favor a more negotiated approach, based on the principle of business continuity and the pursuit of consensual solutions with creditors before reaching the judicial phase. Contractual instruments provide directors with greater flexibility in managing the crisis, encouraging corporate recovery through agreements with creditors.

Thus, the aim of this comparison is to analyze the differences between the two legal frameworks, highlighting their implications for corporate directors and assessing the effectiveness of each model in handling business crises.

Keywords: Crisis, Law, Liability, Management, Risk