

THE IMPACT OF THE NEW ITALIAN EARLY WARNING SYSTEM PROVIDED BY THE IC-CODE ON SMEs GOVERNANCE

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Abstract

The Italian legislator with the Decree-Law No. 155/2017, which exactly in these days – January 2019 – is being converted into the new Insolvency and Crisis Code (IC-Code), has introduced a compulsory Early Warning System to detect occurring crisis.

In its life cycle, an enterprise may experience periods of crisis. Detecting any signals in time is very important: the company's survival may depend on it. If the crisis is monitored promptly and appropriate measures are taken, not only may the enterprise continue to operate but it may also be able to seize opportunities for growth. The concept of crisis, for entrepreneurs, is complex to deal with. Many of them show an attitude of rejection of this eventuality and have a substantial difficulty in admitting the decline, at least until it assumes such importance that the crisis can no longer be hidden. In fact, crises are generally preceded by stages of worsening of the situation which, if promptly diagnosed and dealt with, allow stopping the degenerative process and triggering a turnaround. Crises often occur not because they are inevitable, but because companies cannot catch the warning signs, so they are not able to monitor the threats to prevent them and consequently to limit the damage.

The Early Warning System is intended as an instrument aimed at

driving the directors and the bodies responsible for controlling the companies in the identification of the very first signs of crisis. Monitoring the occurring of the crisis is no longer a responsibility of the sole directors, but other legitimized subjects are identified. These are, on the one hand, the corporate control bodies which in Italy are the Board of Statutory Auditors (also known as Supervisory Board or Collegio Sindacale) and/or the Auditors and on the other hand some qualified creditors such as IRS (Agenzia delle Entrate), the national insurance institution and the tax collection agent. Among these subjects it is undoubtedly the Board of Statutory Auditors to play the role of the main recipient of the signs of crisis as a body assigned to monitor and supervision to enforce compliance of management with statutes and by-laws. This is confirmed by the significant extension of the number of companies – particularly SMEs – that will be obliged to change their habits converting their simple entrepreneurial governance by providing for at least some kind of control bodies to cope with the new Code. The appointment of the corporate supervisory body – Board of Statutory Auditors or single auditor – becomes mandatory if the company has exceeded for at least two consecutive years one of the following: 1) total assets in the financial statements: 2 million Euro; 2) revenues from sales and services: 2 million Euro; 3) employees employed on average during the financial year: 10 employees. The obligation to appoint the control body or auditor ceases when, for three consecutive financial years, none of the aforementioned limits have been exceeded. Size of the company becomes then crucial.

The paper tries a critical reading of the new IC-Code outlining the significant impacts that it is meant to have on Italian companies Corporate Governance, with special emphasis on SMEs. In particular starting from the analysis of some of the parliamentary hearings records some strengths and weaknesses are pointed out that may influence the enforcement and finally the success of the transition towards the new model.

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