Business Crisis Management

Prof. Claudio Frigeni; Prof. Marco Ciccozzi

Module 1 - Business Crisis Law

Prof. Claudio Frigeni

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The course aims to address the themes and issues raised by the occurrence of a business crisis and the solutions and related legal principles set up by the legal system to protect the interests of the various parties involved.

***Intended learning outcomes***

At the end of the course, students will be able to: i) identify the main problems related to the occurrence of a business crisis and the range of solutions offered by the system to address them; ii) know the fundamental rules of corporate crisis prevention tools; iii) know the agreed regulation tools that companies in crisis can access and the different effects that are linked to each of them; iv) know the fundamental rules of the judicial liquidation of companies in crisis.

***COURSE CONTENT***

The course will examine the principles that regulate the discipline of business crisis and protect the interests of the various parties involved, by taking into account the expected entry into force of the Business Crisis and Insolvency Code (Legislative Decree 14/2019) and the amendments made also in the implementation of the Insolvency Directive. First, the course will examine the prerequisites for being subjected to the special regulations of business crisis, the organisational obligations related to the need for timely detection of the crisis, and the envisaged rules on the negotiated settlement of the crisis. Secondly, the course will address the norms that the company in crisis can use in a restructuring perspective (certified agreements and plans, approved agreements, business continuity composition with creditors) as well as the legal principles designed to facilitate the achievement of this result (protection from creditors, exemption from bankruptcy revocation, financial support and pre-deduction, extension of agreements to non-members, composition with creditors). Finally, the course will deal in general terms with the regulations of liquidation instruments (simplified composition, liquidation agreement) and compulsory liquidation (bankruptcy), intended to be applied if it is not possible to find an agreed solution to the business crisis.

***TEACHING METHOD***

The course is divided into lectures in the classroom, mainly seminars, which require knowledge of the parts of the manual specified from time to time on the Blackboard platform. All students are invited to acquire the basic skills for using the Blackboard platform.

***ASSESSMENT METHOD AND CRITERIA***

The assessment will take place in a unitary and contextual way for the substantive part and for the procedural part of the course, and will consist of a written test with three open-ended questions (two questions on the substantive part, one on the procedural part). The students’ answers will be assessed based on their critical ability in organising the presentation of the topics learnt and their use of appropriate terminology. In particular, the exam will verify the basic notions acquired and the knowledge of the main issues underlying the discipline, as well as the ability to argue possible solutions regarding the profiles indicated for the test.

***READING LIST***

For attending students: lecture notes and the material specified during lectures.

For non-attending students, information will be provided through a notice on the lecturer's personal webpage, available at <http://docenti.unicatt.it/ita/claudio_frigeni/>.

***NOTES AND PREREQUISITES***

Prerequisites for the student are basic knowledge of private law and commercial law principles.

To study this subject it is essential to consult the updated regulatory texts. Students are required to be aware of any legislative or regulatory changes that may occur during the year and which will be disclosed via Blackboard and through a notice published on the teacher's personal web page (<http://docenti.unicatt.it/ita/claudio_frigeni/>).

Information on office hours available on the teacher's personal page at <http://docenti.unicatt.it/>.

# Module 2 – Business Crisis Economics

## Prof. Marco Ciccozzi

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The module aims to provide students with a general understanding of how to use the tools provided by the law for crisis regulation, also taking into account the provisions contained in the Crisis and Insolvency Code (CIC) referred to in Legislative Decree No. 14/2019. Specific attention will be paid to both the indicators and the alert procedures of the Crisis and the different roles of the actors in the management of the Crisis (Corporate Bodies /Advisors /Attesters /Commissioners /Liquidators) as well as the specific activities they are required to perform by the new CIC. The aim of the course is also to allow participants to acquire specific knowledge regarding the preparation of Recovery plans in relation to the various principles provided for by the law and to the principles underlying the issue of “certificates” relating to the plans themselves and their management.

***Intended learning outcomes.***

At the end of the course, students will be able to identify and analyse the main indicators (alerts) of a potential crisis by analysing and identifying its main causes, they will also be able to understand if it is necessary to initiate alert procedures and consequent specific reports. They will also be able to formulate the correct construction of a Recovery plan by distinguishing among the Certified plan, the Plan concerning the restructuring agreements and the Composition plan, both for liquidation and continuity, as well as to understand the process underlying the certification of a plan both with reference to the truthfulness of the data and with reference to the reasonableness of the underlying assumptions and to the feasibility assessment that must be issued by the attestor.

***COURSE CONTENT***

The definition of «Business Crisis» in the Crisis and Insolvency Code (CIC) and the role of the appropriate indicators.

The Choice among Crisis adjustment tools. Diagnosis, prediction, and timely emergence: diagnostic tools. The existence of the conditions for recovery. The choice among Crisis adjustment tools. Negotiated composition of the crisis, Certified plans, Restructuring agreements, Composition with creditors and simplified composition: changes and innovations. The organisational structures suitable for prevention and the current tools for the early emergence of the crisis. Crisis prevention, alert, and settlement procedures: relations with other procedures. The obligated subjects and the reward measures. Duties and responsibilities of the corporate bodies.

The actors in crisis management. The professionals responsible for drafting the recovery plan: the Advisors (industrial and/or financial). The Legal Advisor. The Attestor. The Expert in Negotiated Composition. The other roles.

Plans and agreements, tools to support the business continuity: general characteristics. The certified recovery plans in the new Crisis code. The “new” recovery plan: conditions, form and content. The discipline of debt restructuring agreements. Facilitated restructuring agreements and restructuring agreements with extended effect. The new tax and contribution transaction. Practical cases.

Principles for drafting the Recovery Plan: general aspects. The central role of the industrial plan. Recovery plan, the principles for its drafting. The financial aspects of the recovery plan. Taxation of certified plans and restructuring agreements. The feasibility of the plans: sensitivity analysis and stress test. Practical cases. Principles for drafting the Recovery Plan: specific aspects. Objectives of the recovery plan. The process of drawing up the Plan. The description of the starting situation and the reasons for the crisis. The general recovery strategy. The specific impact of the recovery. The financial manoeuvre, the time frame and the planned actions. The economic-financial and equity plan and sensitivity analyses. Execution and monitoring of the plan. Practical cases. Certification principles of the Recovery Plan: general aspects. Prerequisites: qualifications, independence, autonomy, professional and organisational capacity. The assignment: minimum content, engagement letter, performance evaluation, the responsibility of the attestor. Certification principles. The role and certification activity in the assessment of recovery plans. Practical cases. Principles of certification of the Recovery Plan: specific aspects. The structure of the relationship. The truthfulness of the accounting and company data. The feasibility verification activities. Verifications to be followed, the reliance on checks carried out by third parties. Checklists and interaction with other professionals. Practical cases.

Different opportunities for managing and overcoming the Crisis: Negotiated Composition of the Crisis: the figure of the Expert, access to the Chamber of Commerce platform, the Recovery Plan, access to protection measures, operational aspects, the transfer of the company assets, the final report, the simplified arrangement.

Different opportunities for managing and overcoming the Crisis: the certified Recovery Plan. Characteristics of the recovery plan. The qualitative component of the Plan. The quantitative component of the Plan. Procedural aspects relating to the negotiation with creditors, the approval of the Plan, its certification and the modification of the plan following the certification. The fiscal aspects. Practical cases. The different opportunities for managing and overcoming the crisis: debt restructuring agreements. Framework and purpose of the restructuring agreement. Making proposals, minimum content and formalities to be observed. Conducting negotiations with creditors. Support for business continuity. The agreements with extended effectiveness. The attestor, role and function. Verification of the results achieved and cases of succession of plans and agreements. Modification of the agreement and/or plan. The fiscal aspects. Practical cases.

Different opportunities for managing and overcoming the Crisis: creditor composition and arrangement in bankruptcy. Creditor composition. Amendments to the arrangement regulations. The attestor, role and function, data truthfulness and attestation. The feasibility assessment of the liquidation plan and in business continuity. Specific certifications: pre-deductible loans, payments to strategic suppliers. The content of the plan and the proposal. Liquidation and business continuity; direct and indirect continuity. Relations with alert procedures. The “new finance” in the business continuity arrangement. The tax settlement and the “cram down”. The news in the executive phase and in the protection of post-homologous creditors. The treatment of privileged credits. The fiscal transaction. The reduction of privileged creditors. Class formation and judicial control. Competing proposals and offers. Practical cases. The bankruptcy agreement. Limits and assumptions. The proposal and the admissibility judgment. The opinions of the Trustee and Creditors' Committee. Competing proposals. Vote and approval. The execution. Practical cases.

***READING LIST[[1]](#footnote-1)***

The reference reading list of the course will be made available at the beginning of the lectures.

***TEACHING METHOD***

The course is developed through lectures relating to the aspects of the discipline that are relevant and indispensable for the achievement of the specific learning objectives and in general of the course of study. Lectures are supported by practical exercises and experiences.

During lectures various teaching improvement tools are used such as projection of power point presentations in the classroom, diagrams, reading list information and anything else that may be considered useful for improving the effectiveness of teaching.

***ASSESSMENT METHOD AND CRITERIA***

The exam is written and is structured as follows: - 4 open-ended questions with equal weight, assessed with a score from 0 (no answer) to 6 (complete and faultless answer); - 5 closed-ended questions with equal weight, assessed with a score from 0 (no answer or wrong answer) to 1 (correct answer) with possibility of an additional point if all 5 answers are correct.

***NOTES AND PREREQUISITES***

Prerequisites for the students are basic knowledge in the field of balance sheet analysis and corporate finance. Basic notions of corporate law and tax law are also useful for some aspects of the topics covered.

Passing the first exam module is a necessary condition for attending the second module.

Information on office hours available on the teacher's personal page at <http://docenti.unicatt.it/>.

1. The textbooks specified in the reading list can be purchased at the University bookstores; they can also be purchased from other retailers. [↑](#footnote-ref-1)