**Business Crisis Management**

## Prof. Claudio Frigeni – Prof. Paolo Stella Monfredini

# Module 1 - Business crisis law

## Prof. Claudio Frigeni

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

The course aims to examine the themes and issues raised by the occurrence of a business crisis, the solutions and related legal principles established by law 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 associated with the occurrence of a business crisis and the range of solutions offered by the law to address them; ii) know the fundamental rules of the corporate crisis prevention tools and of the assisted settlement procedure; iii) know the agreed regulatory tools which the company in crisis can access and the different effects that are connected 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 the business crisis and protects the interests of the various parties involved, by taking into account the envisaged entry into force of the Business Crisis and Insolvency Code (Legislative Decree No. 14/2019) and the amendments also made in the implementation of the Insolvency Directive. Firstly, the course will examine the prerequisites for being subjected to the special regulations of business crisis, the organisational obligations connected to the need for timely detection of the crisis, and the envisaged rules on the negotiated settlement of the crisis. Secondly, the course will cover the principles that the company in crisis can use in a restructuring perspective (certified agreements and plans, approved agreements, composition with creditors on a going concern basis) as well as the legal principles designed to favour the achievement of this result (protection from creditors, exemption from bankruptcy clawback, financial support and pre-deduction, extension of agreements to non-members, composition agreements). Finally, the course will address, in general terms, the regulations of the liquidation instruments (simplified composition agreement, liquidation agreement) and the compulsory judicial liquidation to be applied in case an agreed solution to the business crisis cannot be found.

***TEACHING METHOD***

The course is divided into classroom lectures mainly based on seminars which require knowledge of the parts of the manual indicated 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 consists of a written test with three open-ended questions.

The assessment will be based on criteria, such as relevance of students’ answers, appropriate use of legal terminology, reasoned and consistent structuring of the presentation, ability to structure and organise the discussion relating to a legal principles, and ability to apply the rules to provide solutions to concrete cases.

***READING LIST***

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

For non-attending students:

G. D’Attorre, *Manuale di diritto della crisi e dell’insolvenza*, Giappichelli, Turin, second edition, 2022 from ch. I to ch. X (pp. 1-384)

***NOTES AND PREREQUISITES***

Prerequisite for the students is basic knowledge of private law and commercial law.

For the study of the subject it is essential to consult the updated normative 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 lecturer'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. Paolo Stella Monfredini

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

The module aims to provide students with a general understanding of how to use the tools envisaged 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 the negotiated composition of the crisis, to the different roles of the actors in the management of the Crisis (Corporate bodies/Advisors/Attestors/Commissioners/Liquidators) as well as to the specific activities which 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.

***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 the need to initiate procedures for the negotiated settlement of the crisis. Students will also be able to formulate the correct construction of a Recovery plan by distinguishing among the Certified plan, the Restructuring agreement plan and the Composition plan, both for liquidation and continuity. They will 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).

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. Prevention procedures, and crisis resolution. 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 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: the financial manoeuvre. Taxation of certified plans and restructuring agreements. The feasibility of the plans: sensitivity analysis and stress testing. 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 the sensitivity analyses. Execution and monitoring of the plan. Practical cases. Attestation 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. The Principles of Attestation. The role and certification activity in the assessment of recovery plans. Practical cases. Attestaton principles of the Recovery Plan: specific aspects. The structure of the relationship. The truthfulness of the accounting and company data. Feasibility verification activities. Verifications to be followed, reliance on checks carried out by third parties. Practical cases.

Different opportunities for managing and overcoming the Crisis: Negotiated Composition of the Crisis: the role 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. 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. 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 attestations: pre-deductible loans, payments to strategic suppliers. The content of the plan and the proposal. Liquidation and business continuity; direct and indirect continuity. The “new finance” in the business continuity arrangement. The tax transaction and the “cram down”. The news in the executive phase and in the protection of post-homologous creditors. The treatment of preferential credits. The fiscal transaction. The reduction of preferential 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 general and specific learning objectives of the study path. 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 that may be considered useful for improving the effectiveness of teaching.

***ASSESSMENT METHOD AND CRITERIA***

The exam is written and is structured as practical exercises on the topic that will be indicated by the lecturer with chosen data.

In particular, the test may request the preparation or completion of a recovery or restructuring plan, or a composition plan based on the analysis and interpretation of the economic-financial data provided, or the drafting of a certification report starting from a recovery or restructuring or composition plan provided together with the economic-financial data.

The exam will assess the knowledge of the regulatory framework and crisis resolution tools, the ability to interpret the data provided, the consistency of the prospects used according to the situation described.

***NOTES AND PREREQUISITES***

Prerequisite for the students is basic knowledge of financial statement analysis and corporate finance. The basic notions of company law and tax law are also useful for some aspects of the topics dealt with.

Passing the first module of the exam is a necessary condition for accessing 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)