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Corporate Governance and Directors' Duties in Italian Company Law: Accountability, Organisational Adequacy and the 2026 Capital Markets Reform

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Abstract

Italian company law must reconcile the autonomy required for commercial decision-making with the protection of companies, shareholders, creditors and the wider market. That balance is particularly visible in a national economy characterised by listed corporations, family-controlled businesses and small and medium-sized enterprises. The 2026 reform of capital-markets legislation, enacted through Legislative Decree No. 47 of 27 March 2026 pursuant to Law No. 21 of 5 March 2024, amends important provisions of the Civil Code and the Consolidated Law on Finance. This article examines directors' duties, corporate organisational arrangements, shareholder protection and governance systems, focusing on Articles 2086, 2380, 2380-bis, 2392 and 2476 of the Codice civile. Written from the standpoint of a law student studying commercial law in Milan, the article connects doctrinal rules with practical questions encountered in corporate transactions, restructuring and governance advice. It argues that corporate accountability cannot be measured by the formal existence of boards, committees or compliance policies. Its effectiveness depends on timely information, clear allocation of responsibility, independent oversight and a demonstrable response to risk. The 2026 reform should therefore be assessed not only by its potential to facilitate capital formation, but also by its effect on minority protection, board accountability and the prevention of financial distress. The article proposes a process-oriented approach to directors' duties, distinguishes legitimate commercial risk from organisational failure, and identifies areas in which implementation and future case law will be decisive.

Keywords: Italian Commercial Law; Corporate Governance; Directors' Duties; Codice Civile; Capital Markets; Minority Shareholders; Corporate Distress

1. Introduction: Commercial Law as a Framework for Allocating Risk

Commercial law is frequently described as the body of rules governing companies, contracts, securities, insolvency and business transactions. Its deeper function is to structure economic power. Company law identifies who may make decisions, what constraints apply to those decisions, who bears losses, and what remedies are available when corporate authority is abused. It therefore mediates between entrepreneurial freedom and accountability.

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The Italian setting is especially instructive. The corporate landscape includes large listed groups and regulated financial institutions, but also numerous closely held and family-owned businesses. Ownership concentration can facilitate long-term strategy and close monitoring of management, yet it can also create conflicts between controlling and minority shareholders. A company's legal form, ownership structure and regulatory status consequently influence how governance rules operate in practice.

Milan provides a useful academic vantage point because it is a major centre of Italian finance, corporate headquarters and professional services. A student studying commercial law in Milan is likely to encounter the practical significance of company law through issues such as mergers and acquisitions, capital raising, compliance, family-business succession, corporate restructuring and disputes over directors' conduct. This perspective does not imply that Milan has a separate company-law regime; the governing law is national and, in many fields, European. The city instead offers a setting in which the practical implications of those rules are readily visible.

The 2026 reform makes the subject particularly timely. Legislative Decree No. 47 of 27 March 2026 implements the delegation in Law No. 21 of 5 March 2024 and amends capital-markets legislation and selected Civil Code provisions concerning companies limited by shares. The decree was published in the Gazzetta Ufficiale on 14 April 2026 and entered into force on 29 April 2026 (D.lgs. 47/2026). Its changes to the governance framework raise the question of whether efficiency, capital-market competitiveness and corporate accountability can be advanced together.

This article argues that the quality of governance depends less on the formal architecture chosen by a company than on whether that architecture produces reliable information, meaningful scrutiny and responsible decisions. The analysis proceeds from the sources of Italian company law to directors' duties, organisational adequacy, shareholder protection, the 2026 reform and possible directions for practice and scholarship.

2. Sources and Structure of Italian Company Law

Book V of the Codice civile is the central statutory source for Italian enterprise and company law. It must be read alongside special legislation, including Legislative Decree No. 58 of 24 February 1998, the Testo unico della finanza (TUF), which regulates financial intermediation and important aspects of listed companies and capital markets. Insolvency and restructuring are principally addressed by Legislative Decree No. 14 of 12 January 2019, the Codice della crisi d'impresa e dell'insolvenza (CCII). EU company-law, accounting, market-abuse, disclosure and restructuring instruments may also shape the applicable regime.

A foundational distinction is between società di persone and società di capitali. Partnerships, such as the società in nome collettivo and società in accomandita semplice, place greater emphasis on the identity and responsibility of their members. Capital companies, especially the società per azioni (S.p.A.) and società a responsabilità limitata (S.r.l.), provide a more structured separation between the company and its members. The S.p.A. is particularly relevant to enterprises with a formal capital structure or access to public markets, while the S.r.l. is widely used by closely held businesses and SMEs.

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The distinction is not merely terminological. It affects the company's organs, capital structure, allocation of authority, member information rights and available remedies. The S.p.A. has a more elaborate governance architecture, including statutory systems of administration and control. The S.r.l. permits a comparatively flexible organisation, subject to mandatory rules. Listed S.p.A.s are additionally governed by the TUF, CONSOB regulation and relevant EU law.

The 2003 reform of company law, implemented through Legislative Decree No. 6 of 17 January 2003, remains a foundational point in the modern system. The 2026 decree adds a further stage of development by amending selected rules concerning capital markets and the governance of capital companies (D.lgs. 6/2003; D.lgs. 47/2026). A sound legal analysis must therefore identify the company's form, listing status, sector, ownership structure and financial condition before selecting the relevant statutory provisions.

3. Directors' Duties: Authority, Diligence and Accountability

Article 2380-bis of the Civil Code places the management and organisation of an S.p.A. exclusively in the hands of its directors, who undertake operations instrumental to the corporate purpose. The provision separates managerial authority from shareholder ownership. Shareholders elect or appoint corporate organs and exercise powers reserved to them by law and the articles of association, but they do not ordinarily manage every operational decision. Directors are entrusted with management because they are expected to assess information, weigh risks and pursue the company's interests over time.

Managerial autonomy must be matched by duties. Article 2392 establishes directors' responsibility towards the company for damage arising from failure to comply with duties imposed by law or the articles of association, measured by the diligence required by the nature of the office and the directors' specific competences. It also addresses the collective responsibility of directors who know of prejudicial facts and fail to take available steps to prevent, remove or mitigate their consequences. The wording of Article 2392 was amended by Article 9 of the 2026 decree, so a current analysis must use the version in force from 29 April 2026 rather than an older commentary (Codice civile, art. 2392; D.lgs. 47/2026, art. 9).

The standard should not be confused with a guarantee of commercial success. A prudent investment may fail because of market volatility, a competitor's innovation, regulatory change or an unexpected event. If directors were liable merely because an outcome was adverse, rational risk-taking would be discouraged. The more useful inquiry concerns the decision-making process: whether directors obtained material information, identified foreseeable risks, addressed conflicts of interest, considered alternatives and monitored implementation.

This approach resembles the rationale of the business-judgment principle, although its precise operation must be understood within Italian statutory and judicial doctrine rather than imported uncritically from another jurisdiction. Courts should avoid replacing a reasonable commercial judgment with their own hindsight assessment, but they must remain able to identify breaches of duty. The principle should not protect decisions made without essential information, decisions driven by undisclosed personal interests, or omissions in the face of serious and known risks.

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Board accountability is also individualised. A director's title alone does not establish the same knowledge or involvement as every other board member. Relevant facts include the information available to the director, the allocation of responsibilities, questions raised at meetings, objections recorded in minutes and actions taken after warning signs emerged. Properly recorded dissent and timely communication with the supervisory organ may be legally significant under Article 2392. These requirements underline the importance of board minutes and internal reporting as evidence of actual governance rather than mere formalities.

4. Organisational Adequacy and Article 2086

Directors' duties extend beyond approving individual transactions. Article 2086(2) of the Civil Code requires an entrepreneur operating in corporate or collective form to establish organisational, administrative and accounting arrangements appropriate to the nature and size of the enterprise, including arrangements for timely detection of crisis and loss of business continuity, and to act without delay where the statutory conditions arise. The provision makes organisational adequacy a legal responsibility rather than simply a preferred management practice.

Adequacy is contextual. A large listed group may need internal audit, specialist risk committees, formal compliance functions and sophisticated consolidated reporting. A small family-owned business may use a more limited structure, but it still needs information sufficient to understand liquidity, liabilities, receivables, profitability and material legal or operational risks. The law does not require every company to adopt the same organisational design; it requires a design proportionate to its activities, size and risk profile.

The connection between Article 2086 and the CCII is particularly important. Legislative Decree No. 14 of 2019 created a consolidated framework for business crisis and insolvency, including mechanisms intended to support timely identification and management of financial difficulty. The policy premise is that a crisis should be recognised while the company still has meaningful options, rather than only after its assets and commercial relationships have deteriorated (D.lgs. 14/2019).

From a governance perspective, directors should be able to obtain reliable cash-flow forecasts, monitor overdue receivables and liabilities, understand financing covenants, evaluate dependence on major customers or suppliers, and receive prompt escalation of material risks. Accounting information prepared only for annual reporting may be insufficient where a company's financial position changes rapidly. Equally, a risk report is of little value if it reaches the board but produces no discussion or action.

Organisational inadequacy must nevertheless be distinguished from unavoidable commercial failure. A well-managed company can become insolvent despite appropriate systems. The stronger case for legal concern arises where the company lacks basic controls proportionate to its business, ignores repeated warning signs, or continues to incur obligations without a credible assessment of its ability to meet them. The focus should be on the quality of the system and the response to information, not on hindsight alone.

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5. Corporate Governance Models and the 2026 Amendments

Italian S.p.A.s may organise administration and control through different governance systems. The traditional model separates the board of directors from the collegio sindacale, which performs statutory supervisory functions. The dualistic model provides for a management board and a supervisory board. The monistic model places a management-control committee within the board structure. The choice of system affects the formal allocation of functions, the route through which information is transmitted and the relationship between management and oversight.

No model is automatically effective. Formal separation can strengthen supervision, but may also create distance between supervisors and management. An internal committee may have easier access to board discussions, but its independence and effectiveness depend on composition, expertise and willingness to challenge management. A traditional model may work well where roles are clear and the supervisory organ receives accurate information; it may work poorly where oversight is passive.

Article 9 of Legislative Decree No. 47/2026 amends provisions of the Civil Code concerning the systems of administration and control and the management of S.p.A.s. The amended Article 2380 describes the available systems, while Article 2380-bis confirms the exclusive responsibility of directors for management and organisation, including the establishment of appropriate organisational, administrative and accounting arrangements (D.lgs. 47/2026, art. 9). The reform should be read as part of the broader attempt to modernise capital-market rules and coordinate them with company law, rather than as a stand-alone change to directors' liability.

The practical significance of the amendments will depend on how companies revise their governance documents and how courts and advisers interpret the updated language. A statutory clarification of management authority does not remove the need to determine whether directors complied with duties of diligence, managed conflicts or responded properly to financial distress. Nor does the choice of a governance model itself prove that oversight was effective.

For a student, the correct method is to compare the amended statutory text with the previous version, identify the exact change, and then ask how it interacts with other provisions. Secondary commentary should illuminate the text, not substitute for it. Because the reform is recent, conclusions about its long-term effects should remain provisional until sufficient implementation practice and case law emerge.

6. Shareholder Rights, Minority Protection and Conflicts of Interest

Corporate ownership does not necessarily mean equal influence. A controlling shareholder may affect board appointments, strategic decisions and transactions with related parties, while a minority shareholder may have limited access to internal information. Concentrated ownership can facilitate long-term planning, but it can also create risks where corporate resources are used to benefit the controller at the expense of the company or other investors.

Italian company law provides rules on shareholder meetings, voting, access to information, challenges to resolutions and actions against directors. The details differ according to company

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form. Article 2476 is particularly significant for the S.r.l.; it regulates directors' liability and provides non-managing members with rights to obtain information on the company's affairs and inspect corporate books and documents, as well as mechanisms to pursue liability in appropriate cases (Codice civile, art. 2476). In an S.p.A., the available remedies must be assessed under the relevant provisions governing directors' liability, shareholder resolutions and the company's governance structure.

The existence of a remedy does not ensure that it is practically accessible. Litigation can be expensive and time-consuming, and a minority investor may lack the information needed to identify misconduct. A remedy that is formally available but practically unusable offers limited protection. Governance arrangements should therefore aim to improve the quality of information before a dispute arises, particularly where transactions involve directors, controlling shareholders or related entities.

Conflicts of interest require careful analysis. A transaction may have a legitimate business purpose while also benefiting a director or shareholder. The legal questions include whether the conflict was disclosed, whether the relevant corporate procedure was followed, whether the terms were defensible from the company's perspective, and whether the decision-makers had sufficient information. Transparency and a documented process are important, but neither automatically validates a transaction that is substantively abusive.

Minority protection must also be balanced against opportunistic litigation. Shareholder remedies should not be used simply to obstruct legitimate management or extract private concessions. A sound framework protects investors while permitting directors to make commercially reasonable decisions. The 2026 reform should consequently be evaluated against both market efficiency and the practical credibility of minority rights.

7. Capital Markets, Disclosure and the European Context

Italian company law operates within a wider financial-regulatory environment. The TUF governs important aspects of financial intermediation, listed companies and public investment markets, while CONSOB exercises statutory supervisory functions. EU legislation affects company disclosure, financial reporting, market abuse, shareholder rights, cross-border restructuring and capital-market integration. The Civil Code is therefore essential but not exhaustive.

The 2026 reform seeks to improve the framework governing capital markets and companies, including by coordinating the TUF and the Civil Code (Law No. 21/2024; D.lgs. 47/2026). The policy challenge is to make it easier for enterprises to obtain capital and organise their affairs without weakening the information and governance standards on which investor confidence depends. Simplification may be valuable where it removes duplication or makes responsibilities clearer. It is less defensible if it creates uncertainty about who is accountable or deprives investors of material information.

Disclosure is not merely a technical compliance exercise. Investors rely on corporate information to evaluate performance, risk and governance. Inaccurate or incomplete information can distort investment decisions and raise questions of civil, administrative or, in serious circumstances, criminal

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liability under applicable law. The precise consequences depend on the facts, the company's status and the relevant statutory regime.

From Milan's financial and professional-services context, the connection between corporate law and market regulation is particularly visible. A transaction involving a listed company may require analysis of corporate authority, disclosure, insider-information controls, shareholder rights and EU rules simultaneously. A lawyer must therefore resist treating company law as a self-contained subject. Proper advice requires mapping the interaction of the Civil Code, special statutes, regulatory rules and EU law.

8. Enforcement, Remedies and the Insolvency Boundary

Corporate accountability depends on the availability of mechanisms to identify and remedy breaches. Potential routes include company actions against directors, shareholder actions where statutory conditions are met, challenges to corporate resolutions, supervisory intervention and proceedings connected with insolvency. The appropriate remedy depends on the nature of the duty, the claimant's legal interest, the company's form and the damage alleged.

An important distinction is between damage suffered by the company and loss suffered directly by an individual shareholder. A decline in share value may reflect damage to the company rather than a separate personal wrong. The correct claimant and cause of action must be identified before proceedings are commenced. This distinction protects the coherence of corporate remedies and prevents the same underlying loss from being characterised inconsistently.

Financial distress makes the relationship between directors' duties and creditor interests more visible. Decisions to continue trading, obtain new finance, dispose of assets or enter restructuring arrangements may affect the prospects of creditors. The CCII supplies a specialised framework for crisis and insolvency, while Civil Code duties continue to inform the responsibilities of corporate organs. The applicable rules should be considered together, especially where directors knew or ought to have known that the company faced serious financial difficulty.

Litigation is not always the most effective means of preventing harm. Once a company has lost its assets or key commercial relationships, a successful claim may provide limited practical recovery. Preventive governance—accurate reporting, documented decisions, independent oversight and early intervention—can be more valuable than liability after the event. Nonetheless, preventive systems must not be used to shield wrongdoing behind paperwork. The court's task remains to assess actual conduct, breach, causation and legally cognisable damage.

9. A Student Perspective from Milan: Translating Doctrine into Practice

A Milan-based student can examine Italian commercial law through three connected settings: capital markets and listed corporations; corporate legal services such as mergers, acquisitions, finance, restructuring and compliance; and the SME economy, including family-owned companies. These

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settings illustrate how the same statutory provisions may raise different practical questions depending on the company's size, ownership and commercial circumstances.

When analysing a proposed transaction, a lawyer must identify the corporate organ authorised to approve it, review the articles of association and any relevant shareholder arrangements, consider conflicts of interest, and determine whether regulatory approvals or disclosure obligations apply. In a distressed company, the analysis shifts towards cash-flow information, early-warning indicators, the adequacy of organisational arrangements and the options available under the CCII. In a dispute involving a minority shareholder, access to documents, the proper claimant and the distinction between company loss and individual loss may be central.

The Milan context also encourages attention to cross-border transactions. A company may be incorporated in Italy but have foreign investors, international lenders, overseas subsidiaries or counterparties governed by another legal system. Corporate authority and directors' duties remain questions of Italian law where applicable, but the transaction may also involve EU rules, private international law, foreign law or contractual dispute-resolution clauses.

A student's perspective should remain analytical rather than falsely autobiographical. It is appropriate to explain why Milan offers a useful setting for studying corporate practice; it would not be appropriate to claim personal experience in a law firm or university unless that experience is real. The academic value lies in connecting statutory interpretation to plausible professional problems and identifying what further evidence would be needed to reach a legal conclusion.

10. Evaluating the Reform: Four Questions

The 2026 reform can be evaluated through four questions. First, does it clarify corporate authority? Clear allocation of management functions can reduce disputes over whether a decision belongs to the board, shareholders or a supervisory body. Clarity must nevertheless be assessed by reading the amended provisions alongside the company's articles and the wider statutory regime.

Second, does the reform preserve accountability? A company should be able to make decisions efficiently, but its organs must remain answerable for breach of duty, undisclosed conflicts and failure to respond to known risks. Article 2380-bis concerning directors' responsibility for management and organisation reinforces the importance of identifying the body responsible for establishing adequate internal arrangements (Codice civile, art. 2380-bis, as amended by D.lgs. 47/2026).

Third, does the reform improve investor confidence? Capital-market competitiveness depends on more than reducing regulatory burdens. Investors also require credible disclosure, predictable enforcement and meaningful remedies where corporate power is misused. The effect on minority shareholders and market transparency should therefore be part of any assessment.

Fourth, does the framework support early identification of crisis? Article 2086 and the CCII make organisational adequacy and timely response important elements of responsible management. Governance should enable directors to recognise distress while restructuring options remain available. This is especially important for SMEs, where financial and managerial resources may be limited.

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These questions also identify an agenda for future research. Empirical work could examine whether different governance models correlate with stronger oversight, whether SMEs have implemented organisational arrangements proportionate to Article 2086, and whether the 2026 amendments affect capital raising or the exercise of minority rights. Such conclusions should not be asserted without evidence; they are research questions that can be tested as implementation develops.

11. Conclusion

Italian commercial law allocates authority, risk and accountability within the enterprise. The Civil Code gives directors substantial management autonomy, but this autonomy is accompanied by duties of diligence, organisational responsibility and accountability to the company. Shareholder remedies, market regulation and insolvency law provide additional mechanisms for addressing misconduct, conflicts of interest and financial distress.

The 2026 capital-markets reform is significant because it amends elements of the governance architecture for capital companies as part of a broader effort to improve the competitiveness and coordination of Italian capital-market rules. Its amendments to Articles 2380, 2380-bis and 2392 should be examined through the exact statutory language and its interaction with existing duties, rather than through general claims that the reform is either deregulatory or pro-business. The long-term effect will depend on implementation, judicial interpretation and the practical response of companies.

From a student-oriented perspective in Milan, the central lesson is that commercial law must be studied at both doctrinal and institutional levels. The doctrinal inquiry identifies the applicable statute, company form, powers of corporate organs and available remedies. The institutional inquiry asks whether decision-makers receive reliable information, whether oversight is independent, whether warnings lead to action and whether breaches can be remedied in practice.

Effective governance does not eliminate business risk. It makes risk visible, allocates responsibility for managing it and provides a defensible process for responding when things go wrong. The measure of reform should therefore be whether efficiency and accountability can be strengthened together. That is the enduring challenge for Italian company law following the 2026 capital-markets reform.

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