**Corporate Risk and Innovation: Directors' Liability and the Boundaries of the Business Judgment Rule**

With a focus on high-complexity sectors and the Space Economy

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In summary / Key Takeaways:

- **The general principle:** Directors' liability toward the company does not arise simply from a negative management outcome. Liability arises from breaching the duty of care or violating laws and bylaws. The legal system accepts business risk.
- **The "shield" of the Business Judgment Rule (BJR):** The BJR protects management decisions. Courts cannot review their **merits** (i.e., appropriateness or profitability). Judicial review can only check the **decision-making process** (including informed choices, proper safeguards, and prior verification) and the rationality of the decision.
- **New limits:** Recent case law (2021-2025) highlights two points of attention: (i) not establishing **adequate organizational structures** under Article 2086 of the Italian Civil Code restricts BJR application; (ii) the rule does not protect violations of the law (for example, tax offenses).
- **Application in innovative sectors:** In high-risk fields such as the Space Economy, the BJR covers innovative and disruptive choices. Directors must meet sector-specific laws and exercise risk due diligence.

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Summary



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Defining the boundaries of directors' liability in limited liability companies (s.p.a. and s.r.l.) is crucial for every business, from start-up to multinational. Addressing this issue requires balancing two needs:

- **not to disincentivize** qualified individuals from accepting the office and not to curb entrepreneurial initiative (here the BJR comes into play).
- to **ensure protection** for the company and its creditors against negligent management.

This balance is even more important in highly innovative sectors such as the **Space Economy**. These sectors also face geopolitical tension, ESG rules, and cyber risks. Fear of liability actions and court reviews could force directors into risk-averse behavior, deterring disruptive R&D investments.

The BJR can constitute the necessary "shield" to make courageous choices, provided they are **informed and reasonable.**

## 1. The general principles: powers and duties

The Italian legal system recognizes a central role for directors. In:

- **s.p.a.**, directors alone manage the company (Article 2380-bis of the Italian Civil Code). Shareholders cannot issue binding directions to management, and directors cannot hide behind a shareholder authorization to escape liability (Article 2364, no. 5, of the Italian Civil Code).

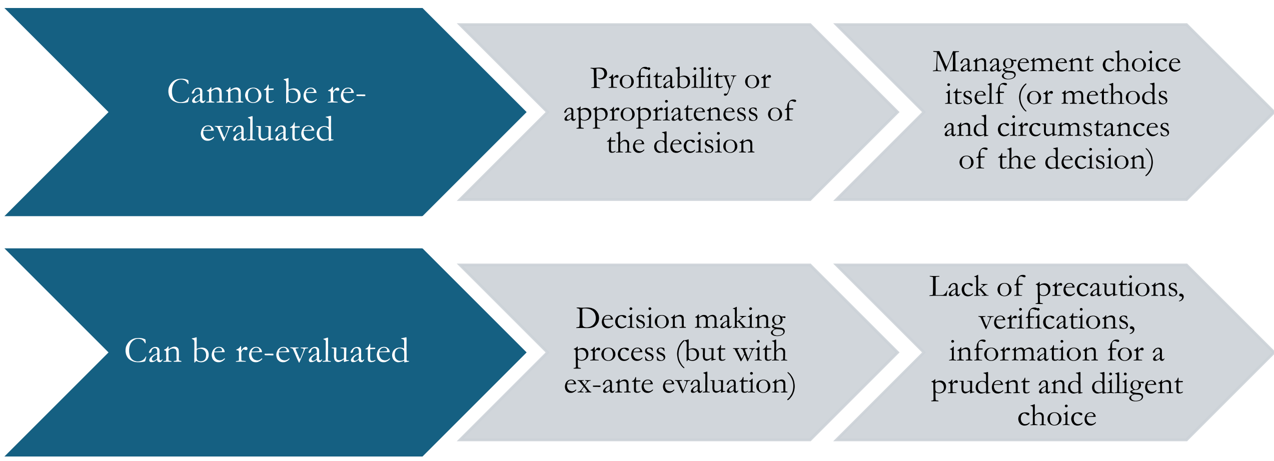
- **s.r.l.**, there is greater flexibility and wider statutory autonomy. Shareholders may intervene in management decisions (Article 2479 paragraph 1 of the Italian Civil Code). However, the director remains liable for management decisions.

Directors' liability toward the company (Article 2392 for s.p.a. and Article 2476 for s.r.l., of the Italian Civil Code) does not result from failing to achieve a specific outcome. It only arises if directors breach their duty to act with the required **professional diligence**.

## 2. The BJR: requirements and boundaries

The business judgment rule, incorporated into the Italian legal system through case law, establishes that a judge cannot **re-evaluate the merits of management decisions**.

In a liability action, the judge cannot evaluate ex post the profitability or appropriateness of the decision. Business risk is an intrinsic part of economic activity. Judicial review, in contrast, focuses on an ex-ante evaluation of the **decision-making process**.




For the management choice to be protected by the BJR, it is necessary that the director:

- is **not** in a **conflict of interest**.

- has **acted in an informed manner**, taking the necessary precautions, performing the verifications, and acquiring the prior information normally required for a choice of that type.

- has **not** made decisions that are **patently unreasonable or irrational**.

**Recent jurisprudential evolution (2020-2025)** highlights a reduction in the scope of applicability of the BJR in certain cases:

- **Failure to establish organizational structures** (new Article 2086 of the Italian Civil Code). The duty to establish an organizational, administrative, and accounting structure adequate to the nature and size of the enterprise has expanded the verification of directors' obligations, and has reduced the applicability of the BJR. This principle was affirmed by the Fifth Division of the Supreme Court (Tax Section) in a non-operating status (*società di comodo*: shell companies) assessment. See Cass. 23/11/2021 no. 36365 and more recently, among others, Cass. 29/10/2025 no. 28670; Cass. 24/10/2025 no. 28227; Cass. 8 October 2025 no. 27038). In particular:

  - The *failure to establish* any organizational measure falls outside the BJR and always entails liability.

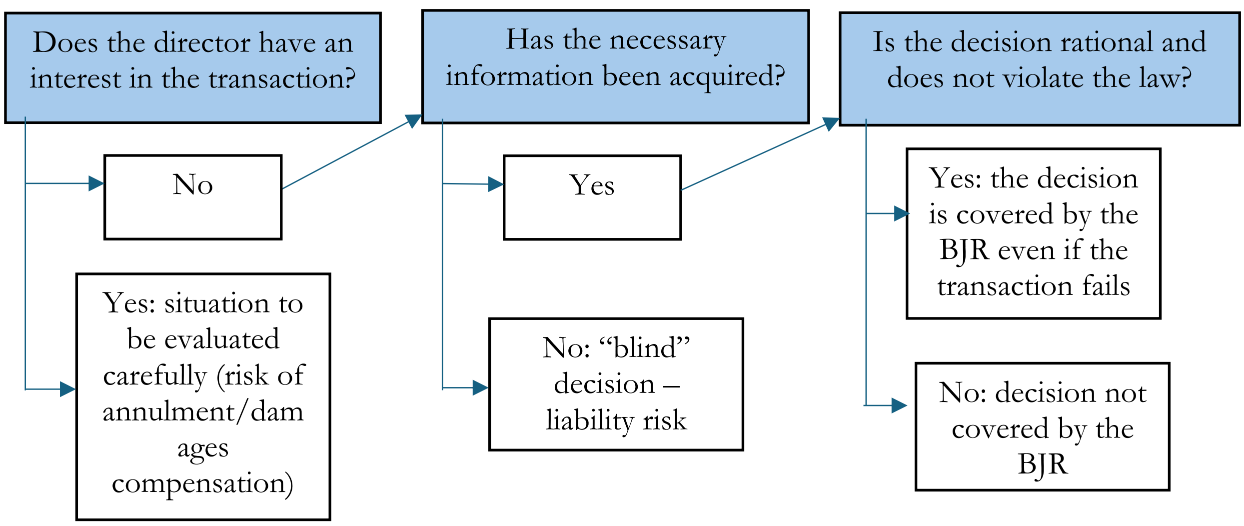
  - The *adequacy of the adopted structure* falls within the BJR, subject to the judicial verification of compliance with the criteria of proportionality and adequacy.

  **Note: "Adequate" does not mean complex**. Article 2086 of the Italian Civil Code requires structures "adequate to the nature and size" of the enterprise. For **start-ups and SMEs**, this does not mean necessarily adopting the controls of an aerospace giant or overburdening the structure. Adequate can also be an agile reporting system, concise and regular minutes that trace strategic choices and decision-making, and risk management mechanisms tailored to the activity. See, by way of example (although not exhaustive and not tailored to the space sector), the CNDCEC (National Council of Chartered Accountants) document "Organizational, administrative and accounting structures: operational check-lists for micro and small enterprises" (https://www.fondazionenazionalecommercialisti.it/node/1719).

- **Violations of law**. The BJR does not apply to violations of law, including tax regulations. Practices aimed at self-financing through omitting tax payments are not "management choices" but violations of specific duties. See, for example, Cass. 30/07/2025, no. 22002, 30/07/2025, no. 22005, and Cass. 25/03/2024, no. 8069.

"Blind" or "irrational" decisions are not tolerated. Examples include opening branches without cost-benefit analysis (Cass. 16/12/2020 no. 28718), buying indebted business units without risk assessment or a recovery plan (Cass. 24/1/2023 no. 2172 and Cass. 22/4/2024 no. 10742), or purchasing properties without an entrepreneurial project (Cass. 1/12/2022 no. 3552).

**See the "decision tree":**



3. Focus: the BJR and high-complexity sectors such as the Space Economy

High-complexity sectors, such as the Space Economy, are characterized by technological uncertainty, high investments, and long return cycles, as well as by rapidly evolving regulatory frameworks. How do the principles on the BJR expressed by case law apply to operators in such sectors?

| **Scenario** | ✓ **BJR Safe Harbor BJR (protecting innovation)** | ✗ **BJR is not applicable, and there is a risk of liability** |
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| **Investment in a failing experimental technology** | The decision was made:<br>○ based on prior verifications and information, including the support of technical opinions (e.g., from the CTO).<br>○ after a risk/benefit analysis.<br>○ without aspects (while keeping in mind the specificities of the sector) of manifest irrationality, unreasonableness, and based on an industrial plan. | The decision was made:<br>○ without a prior investigation under the economic/technical/financial perspective, e.g., not requesting or ignoring unanimous or authoritative negative technical findings in the absence of opinions to the contrary.<br>○ without any risk/benefit analysis.<br>○ with aspects of manifest irrationality and/or unreasonableness, and in the absence of an industrial plan. |
| **Failure of launch/space mission that fails in orbit, hacker attack on the system, or environmental pollution** | The company obtained (i) (authorization, in effective compliance with requirements, standards, and legal obligations, including for safety, space debris mitigation (for example, by establishing specific protocols and monitoring, risk management, recovery plans), and (ii) insurance coverage. | The company (i) launches without obtaining authorization, (ii) or fails to comply with requirements and standards to which, during the authorization process, it declared it would conform, or (iii) adopted protocols and plans only "on paper" and then omits to implement them. |
| **Organizational structures (Article 2086 of the Italian Civil Code)** | The company has adopted a formalized system to monitor and manage financial, technical, and sector-specific compliance risks. | The company has not adopted systems and procedures to detect crises or technical criticalities, and there are no information flows to the board of directors. |

4. Conclusions

The BJR can therefore allow for disruptive decisions and bold technological investments, and it represents a fundamental safeguard for innovation. However, BJR protection is not unconditional and requires:

- **informed, rational, and traceable decision-making processes**: for example, with drafting of minutes, acquisition of technical reports and opinions, development of adequate industrial plans.

- **adequate organizational structures** (pursuant to Article 2086 of the Italian Civil Code): internal structures calibrated to manage the specific risk of the sector.

- **regulatory compliance**.

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| Information and decision-making process (minutes, opinions, cost/benefit analysis, adequate industrial plans) | Legality (general and sector-specific regulatory compliance) | Organization (adoption of adequate structures: Article 2086 of the Italian Civil Code) |

Within this scope, the merits of management choices cannot be re-evaluated by the judge.