

AN EXECUTION GUIDE TO ITALIAN DOWNSIZING AND EXIT

Corporate, Tax, Labor, and Insolvency Law for Multinational Groups

Structured for AI-Assisted Execution

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A practical framework for multinational CFOs, General Counsel, boards and restructuring teams executing an Italian downsizing or exit.

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Preface

McKinsey & Company has just delivered a confidential restructuring plan to **Acme Global Industries**, a Chicago-headquartered multinational with operations across Europe. *Project Barolo*.

Acme runs two plants in Italy — one near Turin, one near Venice. 250 employees. The plan recommends that Acme cease manufacturing in Italy. Production would be partly outsourced to independent third-party manufacturers in Italy and partly transferred to an Acme subsidiary in Vietnam. Finance, accounting and treasury activities would be centralized at the Group's European headquarters in Belgium, alongside the rollout of the Group's new SAP platform. Projected gross savings: approximately €160 million over five years, before implementation and transition costs.

The logic is clear. The execution is not.

Manufacturing leaves, procurement leaves, finance leaves — but the Italian R&D, sales and post-sales functions remain. Approximately 200 positions are expected to become redundant. Italy will remain important to Acme.

Acme is executing one project with two opposite pulls at once: close a platform, and grow the business that survives it. Labor decisions hit R&D and sales. Asset transfers hit tax and transfer pricing. Treasury centralization can't starve the entity Acme is keeping. Corporate decisions must be documented properly, because the Italian board remains responsible for discharging its own duties long after the restructuring has been implemented.

The CEO sponsors an HQ Steering Committee comprising the Group CFO, General Counsel, COO, CHRO, Tax and Transfer Pricing lead, Treasury lead, and R&D and Commercial leadership. The Committee governs the Group mandate, funding, major decisions and Group-level risk. Advisers support it.

But the Committee cannot run Italy from Chicago. It cannot conduct every local negotiation, board action and contractual transition from six time zones away. Nor should the Group assume that local management can execute its own reduction alone. Local managers have essential knowledge and should be involved appropriately, but their own roles may be affected by the project. That is not a criticism. It is a structural fact.

It is also where restructurings become more expensive than planned: through litigation, tax exposure, delay, stranded costs and emergency funding—or through the slower loss of customers, key people, know-how and reputation in the business the Group intended to preserve.

Global restructuring has well-developed technical frameworks. Major advisory networks are highly experienced in reallocating functions, risks and assets for cost efficiency, resilience and tax certainty. The OECD's Chapter IX framework is an important technical reference point.

Finding advisers for the individual parts of the problem is not difficult. A labor lawyer can explain collective-dismissal rules. A tax adviser can model transfer-pricing consequences. A corporate lawyer can prepare the necessary resolutions. An environmental consultant can identify contamination and decommissioning risks.

What is harder to find is a coordinated way to bring those perspectives together: to identify the questions that must be answered, test the assumptions on which the plan rests, allocate decisions, sequence actions, update costs and funding needs, and preserve a reliable record of why the Group acted as it did.

Downsizing is not a checklist. It is a coordinated operational project spanning governance, tax and labor law, with corporate and personal liability exposure running through all three.

This Guide is designed to provide that framework. It does not replace specialist advice, the Group's wider operating-model work or the Italian board's responsibilities. It organizes the Italian legal, tax, labor, governance and financial context so that the Steering Committee and its advisers can use it as one connected working resource.

You do not need to read this Guide from beginning to end.

It is structured in connected sections, with machine-readable reference blocks designed for use in an AI-enabled working environment. Upload it—together with the Group's approved restructuring plan, the relevant factual data and professional advice—into an appropriately secure AI environment.

Used responsibly, it can help the Steering Committee and its advisers to:

- identify the questions that must be answered before irreversible steps are taken;
- map corporate, tax, labor and operational risks;
- develop and update an integrated implementation roadmap, Gantt charts, critical paths, decision gates and accountable owners;
- build and revise a preliminary cost, cash-flow and funding model as the facts develop; and
- turn a high-level global strategy into an executable Italian plan.

The purpose is not to substitute an AI system for professional judgment. It is to provide better context to the professionals and decision-makers using it: a structured source against which to test assumptions, develop alternatives, identify missing facts and ask better questions.

This Guide assumes no prior familiarity with Italian law. It assumes only that the reader is responsible, in some capacity, for a decision with financial, reputational and—in specific circumstances—personal consequences.

Applied to a case such as *Project Barolo*, this framework may lead the Steering Committee to one further conclusion: that the Italian execution should be coordinated by an independent, professionally qualified Chief Restructuring Officer—a CRO—working under a clear mandate with the Italian board, the Committee and the Group's specialist advisers.

The CRO does not replace the board or legal, tax, labor, environmental and valuation specialists. Properly appointed, the CRO can provide the coordination layer that maintains the decision record, integrates workstreams, escalates conflicts and protects the business that remains.

Introduction — Downsizing Italian Operations

Where This Decision Actually Begins

Every year, multinational boards approve a considerable number of global operating-model transformations. Manufacturing moves closer to end markets, or to lower-cost locations. Procurement is centralized. Shared-service centers expand. Distribution models are redesigned. Tax and finance functions restructure the group's value chain to reflect where functions, risks, and assets actually reside. Most of these decisions are commercially rational, globally coordinated, and — from Headquarters' perspective — largely complete once the operating-model design work is finished.

What receives remarkably little attention until execution begins is how those decisions land in a jurisdiction whose legal, labor, and tax systems were not designed to accommodate rapid operational change. Italy is among the clearest examples of this gap. A board decision to consolidate manufacturing elsewhere in the group — a new hub in Central Europe, a lower-cost facility outside the EU — routinely creates Italian governance and evidentiary risk well before the Italian entity's own board is formally convened to act on it, even though the specific tax and labor consequences of that decision crystallize at different, later points in time. By the time the Italian entity's directors are asked to authorize what follows, the substantive decision has often already been made elsewhere — and that fact pattern, by itself, is what this guide is written to address.

The three principal legal consequences do not all arise on the same date, and treating them as simultaneous is itself a source of avoidable error:

- **Governance and evidentiary risk** can begin the moment Headquarters starts directing the substance of the Italian entity's decisions, whether or not any Italian resolution has yet been adopted — this is the *direzione e coordinamento* exposure discussed below and developed fully in Chapter 6.
- **Transfer-pricing consequences** depend on the intercompany arrangements actually implemented and the conduct of the parties, assessed under the OECD Chapter IX framework and Article 110(7) TUIR — not on the existence of the Group-level decision as such.
- **Labor-consultation obligations** arise once collective redundancies are genuinely contemplated within the meaning of Law 223/1991, which in Italy, consistent with the EU consultation directive, can be triggered by a strategic decision taken at parent level even before any Italian implementing resolution — but the obligation attaches at that point of genuine contemplation, not at the moment the global operating-model design work concluded.

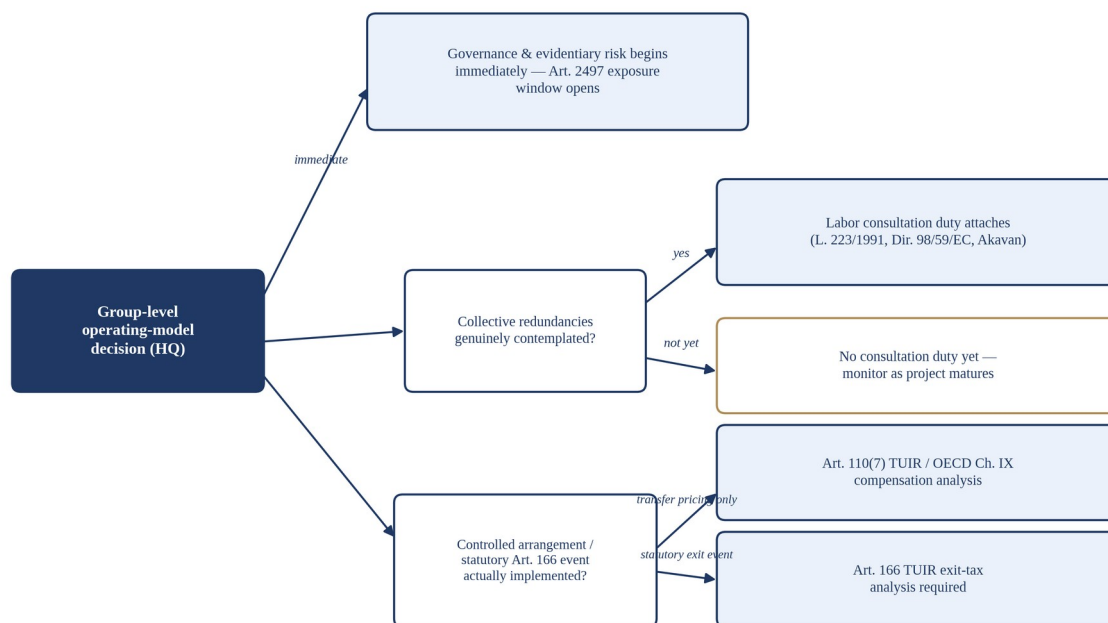


Figure I.1 — The Group-level decision creates governance risk immediately; the labor and tax consequences crystallize separately, on their own statutory triggers.

This is the reason this guide is best understood not as an Italian legal and tax reference, but as the operating manual for executing a multinational operating-model transformation once it reaches Italy. It does not compete with the work of the teams who design where a function, a risk, or an asset should reside within the group — that design work, and the global practices built around it, are addressed directly above. This guide begins where those projects typically end: the disciplined execution of that design within the specific legal, labor, and tax environment of Italy, an environment considerably less accommodating of rapid change than most of the jurisdictions such a redesign will otherwise touch.

The Italian Paradox, Reframed

Italy remains, by most conventional measures, an indispensable location for multinational industrial and commercial operations: it is Europe's second-largest manufacturing economy, a market of genuine scale, and in many sectors a source of technical capability that is not easily replicated elsewhere. It is also a jurisdiction in which any material reduction of a subsidiary's scope — a plant closure, a headcount reduction, the discontinuation of a business line, the transfer of a function to another jurisdiction — engages a body of law considerably more protective of employees, creditors, and the integrity of the operating entity than most foreign boards anticipate, and considerably more protective than the jurisdictions typically involved on the receiving end of the transformation described above.

The conventional framing of this tension treats the Italian subsidiary as an all-or-nothing proposition: the Group stays at full scale, or the Group exits entirely. That framing does not reflect how most multinational groups actually resolve underperformance in an Italian operation, and it does not reflect the operating-model reality just described, in which a downsizing is frequently the Italy-specific output of a value-chain decision made at Group level for reasons that have little to do with Italy in particular. In practice, full exit is the exception. The far more common case — and the one this guide is organized around — is downsizing: a partial, deliberate reduction of scope, executed at the level of a function, a product line, a site, or a business unit, while the Italian legal entity continues to operate. A group may close one of three plants and retain the other two. A group may convert a manufacturing site into a lighter commercial or service operation. A group may discontinue a single division while preserving the rest of the subsidiary's activity. Each of these is a downsizing, not an exit, and each carries a materially different — and in most respects more complex — governance profile than a clean, total wind-down.

This guide is built on that premise. Downsizing, not full exit, is treated here as the general case. Full exit is addressed only in the closing chapter of this guide, and only with respect to the issues that are genuinely unique to total cessation of activity. Every other chapter — corporate governance, tax law, labor law, liability, the judicial and semi-judicial alternatives available under Italian insolvency law — is written with the partial-scope scenario as the default fact pattern, because that is the scenario most foreign HQs are actually facing when they open this guide.

A Confirmed Gap, Not an Assumed One

The positioning above is not a marketing claim advanced without scrutiny. A review of the available literature across comparable jurisdictions — labor-focused practitioner guides in France, Spain, and Germany; the U.S. Department of Labor's own WARN Act material and the accompanying law-firm compliance explainers — conducted as of **August 2026**, found the available material to be overwhelmingly single-pillar: employment-law reference material, not a strategy document spanning governance, tax, and liability. The closest structural analogues identified — Baker McKenzie's Global Restructuring & Insolvency Guide and its Employer Report series on global reductions in force, and DLA Piper's employment guide to global reductions in force together with its GENIE database — come from multi-jurisdiction Big Law practices with genuine depth, but each is confined to a single discipline, employment or insolvency law, and none integrates the tax and governance dimensions this guide treats as co-equal.

Nor is this a gap in the technical work of the global advisory networks whose operating-model practices — PwC's Value Chain Transformation, KPMG's Value Chain Management, EY's Operating Model Effectiveness — sit upstream of the problem this guide addresses. Those practices excel at exactly what they are built for: designing where functions, risks, and intangibles should reside across a group, governed by the OECD's Chapter IX framework. What the material reviewed — Big Four or Big Law — did not address is the execution question this guide is organized around: once the design decision has been made and reaches the Italian entity, how is it coordinated, governed, and carried through as one accountable project, rather than a set of disconnected legal steps. That question is what the chapters that follow are organized to develop.

The Guide's Central Thesis: Integrated Execution, Accountable Governance

A downsizing decided at Headquarters does not execute itself, and it is rarely well executed by the people whose roles it affects. Three structural problems recur with sufficient regularity across Italian downsizings that they warrant statement as a general proposition, defended in the pages that follow rather than merely asserted here.

First, a downsizing managed by existing local management places those managers in a structural conflict of interest that internal safeguards alone do not always fully address: they are asked to plan and execute the reduction of an organization in which their own position, and frequently their own professional network, is at stake. The conflict is not merely theoretical — it bears on incentives, on termination exposure, and on the scope of delegated authority over the very decisions the downsizing requires — and those conditions can create a meaningful risk to objective execution, even where the individuals involved act in good faith.

Second, a downsizing distributed across external advisors engaged on a matter-by-matter basis — a labor counsel for the consultation procedure, a tax advisor for the transfer-pricing file, a corporate lawyer for the board resolutions — produces technically competent work product in each individual domain, but no single party is accountable for the coherence of the whole. Decisions taken correctly within one workstream routinely create avoidable exposure in another, because no one is mandated to see all three at once. This is precisely the fragmentation that persists once a global operating-model redesign reaches the Italian entity: the redesign itself may be executed to the highest technical standard, and the Italian execution can still fail for want of a single accountable owner on the ground.

Third, and most consequentially for the reader of this guide, a downsizing that lacks clearly allocated authority, locally accountable execution, and a properly documented decision-making process creates a materially elevated governance and evidentiary risk for the foreign parent under Article 2497 of the Italian Civil Code — the *direzione e coordinamento* regime — where the parent's direction and coordination of the Italian entity is exercised in a manner contrary to the principles of sound corporate and business management, giving rise to direct liability toward the entity's shareholders for prejudice to the profitability and value of their participation, and toward the entity's creditors for injury to the integrity of the company's assets, that is not offset when the overall result of the group's direction and coordination activity, and any advantage the entity has received from it, are taken into account, and the other statutory conditions are satisfied. In circumstances discussed in Chapter 6, particular implementing conduct in the same downsizing may also generate separate, more serious civil or criminal exposure. An HQ that continues to issue direct operational instructions to a subsidiary undergoing a downsizing, without the interposition of an independent decision-maker on the ground, does not by itself establish 2497 liability — control and direction are not unlawful in themselves — but it does concentrate the governance and evidentiary risk in a way that a properly documented, independently governed process does not, regardless of how well the upstream operating-model decision was designed.

These three problems share a common root: a downsizing is treated as a sequence of separate legal, tax, and labor decisions rather than one coordinated project with a single accountable record. The integrated framework this guide provides — organized for use in an AI-enabled working environment, as described in the Preface — is designed to close that gap directly, whatever governance model ultimately carries out the execution. In many cases, closing it fully calls for a further, more specific governance decision, addressed below.

Note on the CRO recommendation. Appointing an independent Chief Restructuring Officer is stated here, and throughout this guide, as the author's recommended response to the exposures just described — a professional recommendation, not a requirement of Italian law. Every subsequent reference to the CRO model in this guide should be read subject to that qualification.

As the Preface discusses in relation to Project Barolo, one recommended response — not the only path through this framework, but the one this guide develops in full — is the appointment of an independent Chief Restructuring Officer: specifically, an independent, professionally qualified *dottore commercialista* acting as an independent

execution lead — contractually mandated, operating under clearly documented authority, and accountable to the Italian entity's board — rather than as an instrument of Headquarters or a continuation of existing local management. This is not proposed as a procedural formality, and it is not proposed as a substitute for the group's own operating-model advisors. Properly appointed and consistent with the Preface's description of the role, it materially improves, more than any single legal instrument discussed in the chapters that follow, whether the Italian leg of a global transformation is executed with control and defensibility, or without either. The reasoning behind this recommendation, its legal foundations, and its practical implementation are developed at length in Chapter 7; it is introduced here because, where it applies, it is a frame through which the subsequent chapters can usefully be read.

How to Read This Guide

The chapters that follow are organized around three co-equal substantive pillars — corporate governance, tax law, and labor law — with a fourth thread, liability, running across all three rather than confined to any one of them. A dedicated diagnostic chapter precedes the substantive pillars, because a downsizing cannot be properly governed, taxed, or negotiated with the workforce until the Group has established, with precision, what is actually being reduced. The judicial and semi-judicial alternatives available under the Codice della Crisi d'Impresa e dell'Insolvenza are given full standalone treatment, on the premise that a foreign HQ facing early-stage financial or economic imbalance in its Italian operation needs to understand these instruments as governance tools available before insolvency, not merely as cautionary outcomes to be avoided. Full exit is addressed last, as the closing chapter, confined to what full cessation adds to — rather than repeats from — the downsizing framework. Appendix A follows the closing chapter and converts the legal, governance, tax, and labor analysis developed throughout the guide into the financial model a CFO must build to determine whether a proposed restructuring is adequately funded and what its maximum cumulative funding requirement will be. Appendix B then converts the Guide and that financial model into the operational execution architecture: the master activity register, dependencies, decision gates, RACI responsibilities, critical path, evidentiary record, and Steering Committee dashboard required to turn the framework into a controlled implementation plan.

Readers who think in terms of a project timeline rather than a legal-subject-matter sequence will find the chapters map naturally onto one: the strategic decision to downsize precedes Chapter 2's diagnostic of what survives, transfers, or terminates; governance, tax, and labor execution follow in Chapters 3 through 5; liability and the independent CRO's mandate in Chapters 6 and 7 govern how that execution is controlled and defended; Chapters 8 through 11 address the alternative paths — negotiated restructuring, an asset-deal exit, multi-site rationalization, or full closure — a downsizing may ultimately take; Appendix A translates whichever of those paths is chosen into a funded, monitorable financial model; and Appendix B converts the Guide and that financial model into an operational execution architecture of activities, dependencies, decision gates, RACI responsibilities, critical path, and evidentiary records. The chapters remain organized by subject matter, not by project phase, because the pillars are interdependent rather than sequential — but the reader executing a live project should feel free to move between them in the order the project itself demands.

Instructions for AI-assisted use of this guide

1. Treat every statement of Italian or EU law below as general guidance current to this guide's stated review date, not as a substitute for jurisdiction- and date-specific legal advice.
2. Distinguish, throughout, mandatory law from the author's professional recommendations — the two are labelled separately wherever the distinction matters, beginning with the CRO disclaimer above.
3. Do not treat the independent-CRO model as a legal requirement of Italian law; it is not one.
4. Before generating an action plan from this guide, obtain the factual inputs identified in Chapter 1, §1.10 and the intake block below — end-state, entity type, headcount and site scope,

union arrangements, decision status, and delegated authority.

5. Identify separately, for any output generated: immediate preservation actions, decisions requiring the Italian board, matters requiring local legal advice, tax analyses proper, and employee-consultation triggers.

6. Cite the relevant section of this guide and, where possible, the underlying primary legal source for every material recommendation.

7. Do not calculate statutory deadlines until the relevant triggering date and factual threshold have been confirmed against current law.

8. Before relying on any statutory threshold, filing requirement, procedural deadline, tax rate, incentive rule, CCII provision, regulatory-clearance requirement, or case-law proposition drawn from this guide, verify that it remains current as of the action-plan date. Where current-law verification is unavailable, flag the item for verification rather than treating this guide as conclusive.

When generating an action plan from this guide, structure the output as: (1) facts confirmed; (2) facts still required; (3) immediate actions and preservation measures; (4) decision gates and the responsible decision-maker for each; (5) workstreams, dependencies, and sequencing, expressed as an integrated Gantt chart and critical path with decision gates, consistent with the Preface; (6) legal or tax matters requiring current-law or specialist verification; (7) financial-model inputs and the maximum funding requirement, per Appendix A; and (8) the evidentiary record to be created as the project proceeds; and (9) the operational execution architecture required by Appendix B, including the master activity register, dependencies, decision gates, RACI responsibilities, critical path, and Steering Committee dashboard.

Roadmap: What Each Chapter Delivers

Preface. Narrates a live case — Project Barolo — to show, rather than assert, what problem the guide solves: the absence of a single integrated, AI-ready framework for executing a partial reduction of Italian operations, as distinct from the abundant literature on full exits and the sparse literature on labor mechanics alone. States the guide's central proposition as an execution framework first — coordinating governance, tax, and labor decisions in one accountable, documented process — and identifies the independent CRO, developed fully in Chapter 7, as the framework's recommended, not mandatory, governance conclusion in cases like Barolo.

Introduction. Reframes the "Italian Paradox" — industrial value against structural exit complexity — around downsizing rather than exit, since downsizing, not closure, is the scenario most foreign HQs actually face. States the guide's central thesis: that a downsizing is one coordinated project spanning corporate governance, tax, and labor law, with corporate and personal liability running through all three, and that its outcome depends on integrated, accountable execution rather than a sequence of disconnected legal steps. Develops three structural risks that fragmented execution creates — local-management conflict of interest, uncoordinated external advisers, and parent-level exposure under Article 2497 c.c. — and introduces, as this guide's recommended response in appropriate cases, the appointment of an independent CRO, developed fully in Chapter 7.

Chapter 1 — Scope, Framework, and the Diagnostic Imperative. Fixes the vocabulary and architecture for the entire guide: downsizing as the general case, full exit as the exception addressed only in Chapter 11; the three co-equal pillars; liability as a thread rather than a pillar; and the diagnostic exercise as the guide's analytical

precondition to pillar-level work. Closes with the roadmap that this section reproduces at guide level, and with what the foundational record itself must show.

Chapter 2 — The Diagnostic. Delivers the fact-finding methodology every subsequent chapter depends on: a systematic classification of every tangible asset, intangible asset (registered IP, know-how, and specialized workforce capability treated as an intangible), and continuing liability tied to the scope being reduced, sorted into surviving-and-transferring, surviving-and-remaining, or terminating. The worked illustration applies the methodology to a representative manufacturing scenario; the closing sections map each classification outcome explicitly to the chapter — governance, tax, or labor — where it is subsequently addressed, and state what the diagnostic record itself must show.

Chapter 3 — Pillar I: Corporate Governance. Covers the civil-law authorization mechanics for a partial reduction: board and shareholder resolutions, the parent's *direzione e coordinamento* exposure specific to a partial-scope decision, and the formal appointment of an independent governance lead — positioning the CRO recommendation introduced in the Introduction within a specific procedural home, not merely a rhetorical claim, and establishing that a *procura* confers representative authority for defined acts only, does not transfer the board's statutory responsibility, and — if drafted as an open-ended grant of authority — risks the appointee being characterized as an *amministratore di fatto*. The corporate-law mechanics of branch and function transfers under Articles 2555–2560 c.c. are addressed at the governance level, cross-referencing Chapter 9 for the integrated standalone transaction treatment and its role as a strategic alternative and Chapter 4A for its tax consequences; financing-agreement and shareholder-loan subordination risk under Art. 2467 c.c. and the evidentiary record a defensible governance process depends on follow. The chapter closes on the governance of whatever “residual” entity survives the downsizing, including the entity-type-specific withdrawal-right exposure — narrower for the s.p.a. under Art. 2437 c.c., broader for the s.r.l. under Arts. 2479 and 2473 c.c. — that a downsizing crossing into a substantial modification of the corporate object can trigger.

Chapter 4A — Tax Law: Compensation and Transfer Pricing on Functional Change. Applies the OECD Chapter IX business-restructuring framework to a functional downgrade that falls short of full exit — the scenario a downsizing typically produces. Develops the two-part compensation-and-repricing framework, the ORA test and its documentation requirements, the distinction between ordinary arm's-length compensation under Article 110(7) TUIR and the narrower exit-tax circumstances governed by Article 166 TUIR, together with the corresponding inbound basis rules under Article 166-*bis* TUIR, and the valuation of the customer list, given its frequent materiality and DAC6 reportability. Addresses the DEMPE framework governing manufacturing know-how, and Advance Pricing Agreements and the Mutual Agreement Procedure as tools for securing certainty over the position taken. Closes by noting the jurisdiction-neutral character of the ORA standard, relevant wherever the group is redeploying rather than eliminating the function, and by stating what the compensation and transfer-pricing record itself must show.

Chapter 4B — Tax Law: Post-Downsizing Tax and Compliance Exposure. Addresses what remains exposed once the downsizing is executed: permanent establishment risk under Art. 162 TUIR, VAT fixed-establishment risk on any transitional servicing arrangement, Pillar Two/GloBE and DAC9 obligations that a partial reduction can trigger, cross-border financing exposure (interest deductibility, withholding, loan waivers), cross-jurisdictional valuation disputes addressed through MAP and the Arbitration Convention, and clawback risk on incentives tied specifically to divested assets or sites. General data-protection and records-retention exposure under GDPR and D.Lgs. 196/2003 at closure is treated in this Chapter 4B; Chapter 6 addresses only the narrower intersection with D.Lgs. 231/2001 where computer or cyber predicate offences are relevant. Closes by stating what the post-downsizing compliance record itself must show, given that these exposures are maintained on an ongoing basis rather than closed at a single point in time.

Chapter 5 — Pillar III: Labor Law. Develops the collective dismissal procedure under Law 223/1991 for the downsizing-specific case, including the phased or “rolling closure” technique that a partial reduction makes available but a full exit typically does not. Covers CIGS as an alternative to redundancy, the transfer-of-undertaking rules under Art. 2112 c.c. where a function survives under a different entity, the retention and knowledge-transfer planning a downsizing frequently requires for the critical employees it needs to keep through closing, group liability and *repêchage* obligations, and the union-relations dynamic of a “selective” cut as distinct from a total closure. The comparative note against France's PSE and the US WARN Act is included specifically to demonstrate Italy's relative

procedural weight to a reader used to lighter-touch regimes, not as a general survey, and the chapter closes by stating what the labor record itself must show.

Chapter 6 — Liability: The Cross-Cutting Thread. Consolidates the civil, insolvency, tax, and criminal liability layers introduced piecemeal across the governance, tax, and labor chapters into a single stratified framework, with particular attention to parent liability under Art. 2497 c.c. as it applies specifically to a partial-scope restructuring, *amministratore di fatto* risk (including the risk an improperly scoped CRO or an overly directive HQ can itself generate), and Modello 231 exposure tied differentially to divested versus retained activities. Closes by connecting each liability layer back to the governance response — documented process, independent appointment — developed fully in Chapter 7, making this chapter the direct evidentiary bridge to the CRO recommendation developed in Chapter 7, and by stating what the liability record must show across all five layers together, as the synthesis every subsequent chapter's own closing section restates in its own terms.

Chapter 7 — The Independent CRO: Governance, Mandate, and Execution. The Guide's governance-recommendation chapter. Diagnoses why Italian downsizings fail even when each pillar's technical work is sound — the integration gap created by fragmented execution — and why local management cannot resolve that gap by self-executing the process. Makes the affirmative case for an independent, professionally qualified *dottore commercialista* — not local management, not outside counsel, not a fragmented advisory panel — as the party who should govern a downsizing, addressing why this profile rather than a lawyer's, what six capabilities the role requires, how the CRO's mandate interacts with the group's own internal strategy function, how the dual mandate of operating the retained business while executing the divestment is managed in practice, the PE risk the CRO mandate can itself generate if poorly structured, reporting lines to HQ, the conditions under which a downsizing mandate should escalate into a full-exit mandate — the guide's first explicit bridge to Chapter 11 — and what the appointment record itself must document to make the CRO's independence demonstrable rather than assumed.

Chapter 8 — Composizione Negoziata della Crisi. Delivers the standalone treatment of the CNC promised in Chapter 1, positioned as a governance instrument available at the first sign of financial stress rather than an insolvency procedure of last resort. Covers why foreign groups typically wait too long to engage it, the Article 12 CCII access threshold and the Article 25-novies CCII early-warning framework, the *esperto's* appointment and interaction with the CRO, the protective measures and confidentiality that distinguish the CNC from later-stage judicial instruments, the fiscal incentives conditioned on good-faith engagement, and creditor treatment under the *cram-down fiscale* framework. Closes with a decision framework for choosing between voluntary downsizing and CNC-assisted restructuring, practitioner takeaways, and what the engagement record itself must document to preserve the CNC's evidentiary value if the process later escalates.

Chapter 9 — The Asset Deal Alternative. A full standalone treatment of the *cessione di ramo d'azienda*, reflecting its depth and frequency of use as a downsizing exit route: the functional-autonomy and pre-existence requirements under Art. 2555 c.c., a comparative quantification against liquidation and share-deal alternatives, automatic contract succession and creditor-protection mechanics under Arts. 2558 and 2560 c.c., employment treatment under Art. 2112 c.c., the applicable fiscal regime, regulatory clearances spanning merger control and foreign investment screening, the pre-closing due diligence scope those clearances and the comparative analysis both depend on, the asset deal's interaction with the CCII instruments discussed in Chapter 8, and the practical SPA drafting points — perimeter schedules, representations and warranties, indemnification, W&I insurance — that a foreign legal team will need engaging with local counsel. Closes by arguing that the transaction is, at bottom, an accounting exercise as much as a legal one, and by stating what the branch-sale record itself must show.

Chapter 10 — Multi-Site Portfolio Rationalization. Addresses the scenario, common among the guide's intended readership, where the downsizing decision spans more than one Italian site or function: how to prioritize across the portfolio by value, execution cost, and buyer optionality; how sequencing decisions affect leverage in the labor negotiations addressed in Chapter 5; how the portfolio should be optimized financially for enterprise value rather than site-by-site loss minimization; environmental and real estate considerations specific to divested sites; what the program-level governance record must show to demonstrate the rationalization was managed as a single capital allocation exercise rather than a collection of independent closures; and how the retained operations are consolidated once the rationalization is complete.

Chapter 11 — Full Exit: Where Downsizing Ends and Closure Begins. The guide's closing chapter, confined strictly to what is unique to total cessation rather than repeating the framework developed for downsizing throughout the

rest of the guide: the causes of dissolution and the decision to close, the appointment of the liquidator and the transition from management to liquidation, the liquidation procedure and *par condicio creditorum*, communication management, intercompany relationships and cash management during liquidation, labor wind-down specific to total cessation, final tax consequences, residual liabilities that survive closure, heightened exposure in the liquidation phase, and — closing the loop opened in Chapter 7 — the practical mechanics of converting an existing downsizing mandate into a full-exit mandate when circumstances require it. Closes with what this chapter does not cover, an executive exit checklist, and what the full-exit record itself must show.

Appendix A — The Financial Model: Cost, Cash, Recovery, and Scenario Control. Converts the legal, governance, tax, and labor analysis developed throughout the guide into the financial model a CFO must build to fund and monitor the restructuring. Establishes three financial views that must be kept separate — cash flow, profit and loss, and tax — and a cost architecture spanning workforce costs, operational transition and business-continuity costs, lost contribution margin, asset, site, environmental, and real-estate costs, contractual exit and working-capital effects, professional and CRO costs, tax and regulatory cash effects, stranded costs and the residual entity's viability, and recoveries and offsets. Scenario analysis and contingency planning keep expected-value probability weighting distinct from severe-case gross exposure throughout, consistent with the guide's discipline of preserving downside cases as a standalone figure rather than blending them into a single expected-value number. Builds to a monthly cash-flow model, the parent's funding commitment, and board-level decision gates, and closes with an AI-ready minimum input set — subject to a GDPR and confidentiality caution requiring anonymized or pseudonymized workforce data before any input set is compiled or uploaded — and a statement of what the financial record itself must show.

Appendix B — Operational Execution Architecture. Converts the Guide's substantive framework and Appendix A financial model into a reusable implementation layer for Steering Committees, Italian boards, CROs, and specialist advisers. It defines the controlled output package, source hierarchy and data discipline, status vocabulary, master activity and dependency register, decision gates, RACI and decision-rights architecture, critical-path logic, evidentiary requirements, Steering Committee dashboard, and machine-readable controls for AI-assisted execution. It is an operational drafting framework rather than a universal schedule: project-specific facts, current law, professional advice, decision authority, and statutory timing must be confirmed before execution.

Conclusion. Restates the guide's integrated-execution framework and its CRO recommendation as a set of numbered, practitioner-facing strategic takeaways, organized to function as a standalone executive summary for a reader who has not worked through every chapter — consistent with the "why this matters to a foreign parent" close used throughout the guide's constituent sections.

Chapter 1 — Scope, Framework and Diagnostic

1.1 The Governing Distinction: Downsizing vs. Full Exit

The distinction between downsizing and full exit is not merely one of degree. It materially affects how the applicable corporate, tax, labor, and insolvency rules operate, which procedural instruments are available, and — critically — what the desired end-state of the Italian entity is once the process concludes.

For purposes of this guide, "full exit" is used narrowly to mean the wind-down of the Italian legal entity itself — typically culminating in voluntary liquidation or, where financial distress has intervened, one of the judicial procedures available under the CCII. A downsizing, by contrast, contemplates the continued existence and continued operation of the Italian entity, at reduced scope. The entity survives; a function, a site, a product line, or a portion of the workforce does not. A group may also achieve an operational exit from Italy without extinguishing the Italian legal entity — for example through a whole-business sale — and that route is distinguished from full exit in this narrow sense below.

Two analytically distinct questions are frequently collapsed into one, and should not be: whether the entity's *operating activity* continues, and whether the *legal entity* continues to exist. A sale of the entire business as a going concern can leave the vendor entity legally intact but operationally empty; conversely, an entity in formal liquidation retains a residual operating and legal existence — narrowed to realizing assets and satisfying creditors — until cancellation from the register of enterprises. This guide's diagnostic methodology, introduced in §1.5 below and developed fully in Chapter 2, applies to a group's assets, intangibles, and liabilities regardless of which of these two axes is in play; the practical consequence, addressed further in §1.7, is that "full exit" in this guide's sense refers specifically to legal-entity wind-down, and is kept distinct from an operational exit that leaves the entity in existence.

This is not a distinction without practical consequence. A reduction of headcount tied to a partial closure may be governed by the same collective-dismissal framework under Law 223/1991 applicable to a total closure, but the factual justification, the selection perimeter, the redeployment analysis, the available alternatives, and the negotiating posture with trade unions may differ materially between the two scenarios, and are treated accordingly in Chapter 5. A transfer of assets or intangibles out of a business unit being discontinued is scrutinized differently under Italian rules depending on whether the transferring entity continues to operate as a going concern or is itself in the process of cessation — a functional restructuring may generate arm's-length compensation obligations under Article 110(7) TUIR and the OECD Chapter IX framework, addressed in full in Chapter 4A, which is analytically separate from the question of whether Article 166 TUIR's outbound exit-tax regime applies. Article 166 applies only where one of its statutory jurisdiction-exit events actually occurs — a change in the functions, risks, or profit potential attributed to the Italian entity does not, without more, constitute such an event, and Article 166-bis TUIR, which governs the corresponding inbound recognition of tax values, is not a second outbound exit-tax provision and is treated separately in Chapter 4B.

Correction: liquidation does not create a governance vacuum. These are two distinct propositions and should not be merged into one. First, Article 2086 of the Civil Code governs *directors'* duty, during the management phase, to establish and maintain an organizational, administrative and accounting structure adequate to the timely detection of crisis and timely action in response to it; this guide does not suggest that duty applies to liquidators in the same terms. Second, upon dissolution and the transfer of management to the liquidators, the applicable governance purpose changes to the orderly realization of assets and satisfaction of creditors, and liquidators are then subject to their own statutory duties under Articles 2489–2491 of the Civil Code, including the professionalism and diligence required by the nature of their appointment. Taken together, these two regimes mean that entry into liquidation does not create a governance or creditor-protection vacuum — but that conclusion rests on the liquidators' own duties, not on a claim that Article 2086 itself continues to apply unmodified. The record of the company's own conduct up to the point of liquidation remains relevant to any later

challenge, and nothing in this guide should be read as suggesting that adequate organizational and monitoring systems may be dismantled upon a liquidator's appointment.

For this reason, the first analytical step in any Italian reduction project — and the first substantive question this guide asks the reader to resolve — is not "how do we reduce headcount" or "how do we close this site," but "what is the intended end-state of the Italian entity." Everything that follows in this guide, beginning with the diagnostic methodology set out in Chapter 2, depends on that answer being fixed before execution begins.

1.2 The Three Co-Equal Pillars: Corporate Governance, Tax Law, and Labor Law

An Italian downsizing is frequently mismanaged not because any one of its legal dimensions is handled incompetently, but because the three principal dimensions — corporate governance, tax law, and labor law — are treated as sequential rather than co-equal and interdependent. This guide rejects that sequencing deliberately.

Corporate governance, developed in Chapter 3, encompasses the civil-law mechanics of authorizing and executing a reduction in scope: board and shareholder resolutions, the parent's exposure under the *direzione e coordinamento* regime of Articles 2497 *et seq.* of the Civil Code, the appointment of the independent CRO through appropriate corporate approvals, mandate, and delegated authorities, the mechanics of a branch or business-unit transfer under Articles 2555–2560 of the Civil Code where the downsizing takes the form of a *cessione di ramo d'azienda*, and the treatment of intercompany financing arrangements — including the subordination risk attaching to shareholder loans under Article 2467 of the Civil Code — during a period of reduced scope.

Tax law, developed across Chapters 4A and 4B, encompasses the consequences that attach to the transfer, discontinuation, or relocation of assets, functions, and intangibles: arm's-length compensation obligations under the OECD Chapter IX framework as implemented domestically, the potential application of the Article 166 TUIR exit-tax regime where a statutory jurisdiction-exit event actually occurs, and the ongoing compliance exposure — permanent establishment risk, VAT fixed-establishment risk, Pillar Two/GloBE considerations for groups within scope — that a partial reduction can create or leave behind. As set out in §1.1 above, a functional change and a statutory exit event are analytically distinct triggers, and this guide is careful throughout to treat them as such.

Labor law, developed in Chapter 5, encompasses the procedural and substantive obligations that arise wherever a downsizing affects employment: the collective consultation procedures under Law 223/1991 where thresholds are met and collective redundancies are genuinely contemplated, the available alternatives to dismissal, and the negotiation dynamics that determine whether a workforce reduction proceeds on a controlled timeline or becomes the subject of the kind of public labor dispute that Italian industrial relations can, and regularly do, produce.

None of these three pillars operates as a precondition to, or a mere consequence of, either of the other two. A labor consultation strategy decided without regard to the tax consequences of the underlying asset transfers routinely produces a settlement structure that generates unplanned tax exposure. A tax structure decided without regard to the governance mechanics required to implement it routinely proves undeliverable once the labor consultation timeline is factored in. This guide addresses each pillar at comparable length and analytical depth, in a sequence — governance, then tax, then labor — that reflects the order in which decisions must, in practice, be locked down, not a hierarchy of importance.

1.3 Liability as a Cross-Cutting Thread

Personal and corporate liability exposure is not confined to any single pillar, and treating it as a subordinate concern within, for example, the corporate governance chapter would misstate both its scope and its severity. Liability risk in an Italian downsizing may arise independently or cumulatively from governance decisions, from tax positions, and from labor-law conduct, and it can accumulate across all three simultaneously as a downsizing project proceeds — the relative weight of each source is a function of the individual project, not a fixed proportion. This guide accordingly treats liability as a cross-cutting thread, consolidated in its own chapter — Chapter 6 — rather than distributed piecemeal across the pillar chapters.

The principal exposures are addressed together, and at length, in Chapter 6, but their scope should be understood from the outset. Directors of the Italian entity — and, under the *direzione e coordinamento* doctrine of Article 2497 of the Civil Code, the foreign parent itself — face civil liability where the parent's direction and coordination of the entity is exercised contrary to the principles of sound corporate and business management: Article 2497 establishes direct liability toward the entity's shareholders for prejudice to the profitability and value of their participation, and toward the entity's creditors for injury to the integrity of the company's assets, where the other statutory conditions are satisfied and the harm is not offset once the overall result of the group's direction and coordination, and any compensating advantage the entity has derived from it, are taken into account. Control of the Italian entity is not, by itself, unlawful, and the exercise of direction and coordination is not presumptively wrongful; liability requires the statutory elements just described, assessed on the entity's actual conduct and its documented record. Where a downsizing is mismanaged to the point of aggravating the entity's financial distress, directors face exposure to claims for having failed to adopt an organizational structure adequate to the timely detection of crisis, as required under Article 2086 of the Civil Code during the management phase — a duty that, per §1.1 above, does not lapse on entry into liquidation, though upon the transfer of management to the liquidators the applicable governance purpose changes and liquidators are instead subject, in particular, to Articles 2489–2491 of the Civil Code, including the professionalism and diligence required by the nature of their appointment. In the most severe cases — typically involving asset transfers structured to disadvantage the Italian entity's creditors ahead of an eventual insolvency — particular implementing conduct may also generate separate exposure in the criminal sphere, including *bancarotta fraudolenta per distrazione* under the bankruptcy provisions of the CCII.

Correction: Modello 231 does not extend to ordinary compliance failures. Legislative Decree 231/2001 imposes administrative liability on an entity only where a listed predicate offense is committed in that entity's interest or to its advantage; the adoption and effective implementation of a suitable organizational and control model (*Modello 231*) can provide a defense or mitigation depending on the circumstances, but the model is not a general statutory guarantee against corporate wrongdoing of any kind. Ordinary labor-law, GDPR, or records-retention non-compliance is not, without more, a listed predicate offense — relevant exposure typically arises through specified occupational-safety, environmental, corporate, tax, or cyber-crime offenses linked to the entity's interest or advantage. Where the Italian entity has adopted an organizational, management and control model under Legislative Decree 231/2001, it is that model's suitability and effective implementation that bears on the entity's own exposure where a listed predicate offense is committed in its interest or to its advantage. A foreign parent's group compliance framework may be relevant evidence of the parent's own governance record under Article 2497, but it does not automatically substitute for a model appropriately adopted and implemented by the Italian entity itself.

The reader should take from this section a single operating principle, developed at length in Chapter 6: liability in an Italian downsizing is not a risk confined to the closing stages of a distressed process. It is present from the first governance decision, and it is materially reduced — though never eliminated — by the presence of documented, independent, professionally competent decision-making throughout. That is the liability-side justification for the governance thesis introduced below, and it is the direct bridge to Chapter 7.

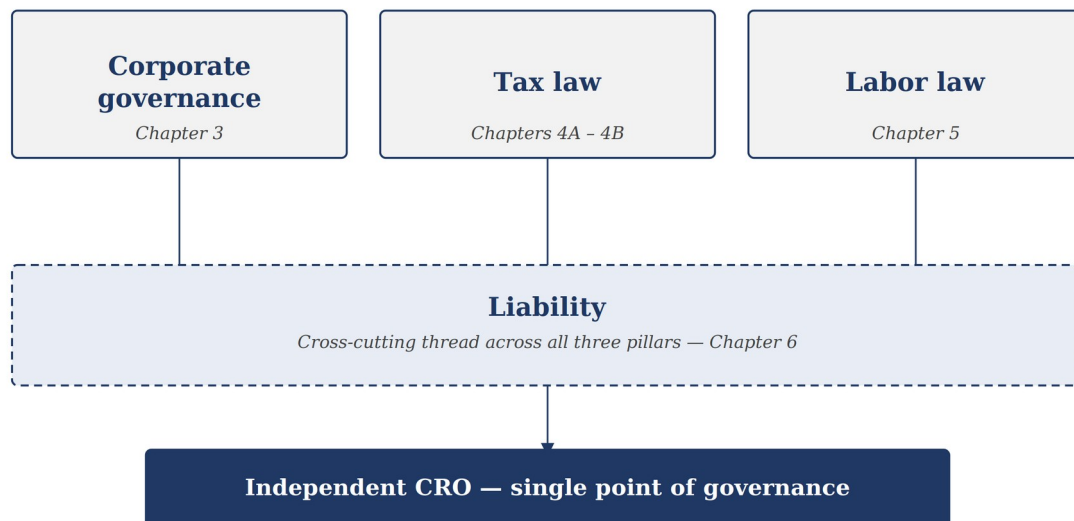


Figure 1.1 — The three co-equal pillars, liability as a cross-cutting thread, and the independent CRO as a single point of governance coordination.

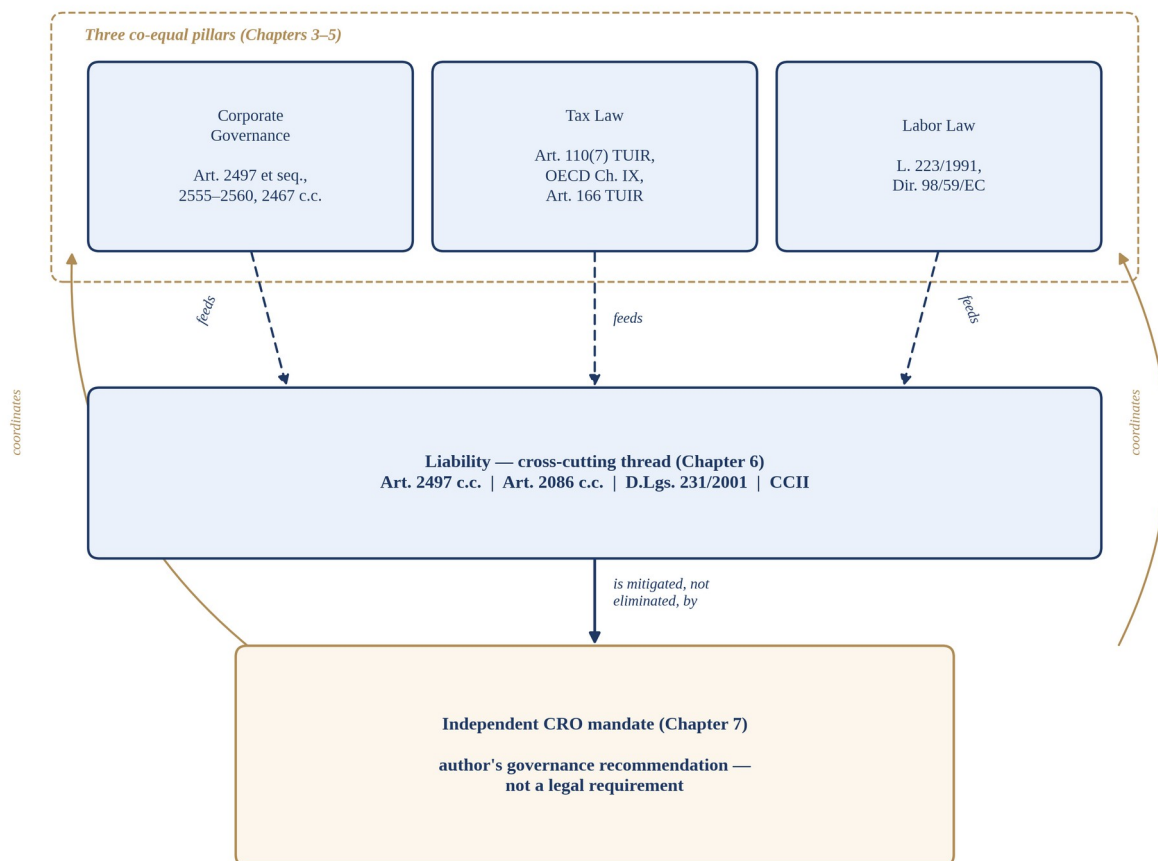


Figure 1.2 — Structural relationship between the three pillars, the liability thread, and the recommended CRO mandate. Dotted lines: each pillar's execution generates liability exposure. The CRO mandate is a mitigation recommendation, not a legal requirement.

1.4 Why Governance of the Process — Not Just Its Legal Steps — Determines the Outcome

It is possible to execute every individual legal step of an Italian downsizing correctly — a properly authorized board resolution, a technically sound transfer-pricing file, a procedurally compliant labor consultation — and still produce an outcome that costs the group more, in time, in cash, and in liability exposure, than a better-governed process would have. The reason is that Italian law does not merely regulate the individual steps of a downsizing; it scrutinizes, particularly through the lens of Article 2497 and the business-judgment standard applied by Italian courts, the quality and independence of the decision-making process that produced those steps.

A downsizing directed at every stage by Headquarters, implemented by local management whose own positions are affected by the outcome, and advised by counsel engaged separately for each individual workstream, is structurally poorly positioned to demonstrate — after the fact, to a court, to the Agenzia delle Entrate, or to trade union representatives — that decisions were taken in the entrepreneurial interest of the Italian entity, independently assessed, and properly documented. This is precisely the evidentiary gap that Italian courts probe when a downsizing is later challenged, whether by creditors, by dismissed employees, or by the public prosecutor. It is also, as noted in this guide's Preface, the gap that a global operating-model restructuring — however well executed at the transfer-pricing level by the group's own advisors — does not by itself close once it reaches the Italian entity.

Author's recommendation — not a legal requirement. The governance response to this exposure — and the thesis this guide advances throughout — is the appointment of an independent Chief Restructuring Officer, specifically a professionally qualified *dottore commercialista* acting as an independent execution lead rather than as an instrument of the parent. An independent CRO can provide a single, accountable point of coordination across the corporate governance, tax, and labor workstreams; can supply a decision-making record that is informed, independently assessed, properly authorized, and contemporaneously documented, of the kind that Article 2497 exposure and business-judgment scrutiny reward; and can interpose a professional buffer between Headquarters' strategic direction and the day-to-day execution that may reduce — without eliminating — the *direzione e coordinamento* exposure discussed above, provided the mandate is genuinely independent in substance and not merely in form. The full legal and practical case for this model, including its implementation through appropriate corporate approvals, mandate, and delegated authorities under Italian corporate law, is developed in Chapter 7. It is introduced at this stage of the guide because the reader should evaluate every subsequent chapter — the diagnostic methodology, the treatment of each pillar, the judicial alternatives — against the question of who, in the reader's own organization, is positioned to govern the process this guide describes.

1.5 The Diagnostic Starting Point

No downsizing can be properly governed, taxed, or negotiated until the group has established, with precision, what is actually being reduced. This is not a formality to be resolved in passing; it is the analytical foundation on which the three substantive pillars addressed later in this guide depend.

Chapter 2 of this guide sets out a full diagnostic methodology, developed specifically for the partial-scope scenario, that classifies every tangible asset, every category of intangible asset — including registered intellectual property, manufacturing know-how, commercial and customer-relationship intangibles, and specialized workforce capability treated conceptually as an intangible — and every continuing liability associated with the affected scope, into one of three categories: surviving-and-transferring, surviving-and-remaining, or terminating. This classification exercise is not incidental to the substantive pillar chapters that follow; it is their factual foundation. Chapter 3's treatment of a branch transfer, Chapters 4A and 4B's treatment of exit-tax and transfer-pricing exposure, and Chapter 5's treatment of consultation scope all depend directly on which category a given asset, intangible, or liability has been assigned to. A group that proceeds to structure a downsizing before completing this diagnostic exercise is, in practical terms, structuring a transaction whose object has not yet been fully identified.

1.6 Judicial and Semi-Judicial Alternatives: Full Standalone Treatment of the CNC

This guide departs deliberately from the convention, common in comparable publications, of treating judicial and semi-judicial insolvency instruments as cautionary alternatives to be mentioned briefly and avoided. The *Composizione Negoziata della Crisi* (CNC), introduced under the CCII, is addressed in this guide in Chapter 8, a dedicated, standalone chapter, on the premise that it is properly understood not as a last-resort insolvency procedure, but as a governance instrument available to a foreign-owned Italian entity once the entity is in a state of patrimonial or economic-financial imbalance making crisis or insolvency probable, where recovery is reasonably pursuable — the statutory threshold Article 12 CCII itself sets — rather than only once the entity approaches formal insolvency.

The CNC allows the entity's management, assisted by an independent expert appointed through the competent chamber of commerce, to negotiate with creditors under a structured, confidential, and normally extrajudicial process while retaining ordinary management powers; protective measures are available to the entity during the negotiation, but they follow specific judicial steps and are not automatic upon a mere decision to enter the process. For a foreign parent managing a downsizing that carries meaningful execution or financial risk, an early, properly documented assessment of the entity's position against the CCII's own early-warning indicators — conducted with Italian counsel and discussed further in Chapter 6 — is, as a matter of governance recommendation rather than legal effect, a step that can strengthen the documented diligence of the group's decision-making, independent of whether the negotiated procedure is ultimately activated. Chapter 8 is deliberately confined to the CNC itself; the broader instrument hierarchy under the CCII — *accordi di ristrutturazione*, the *piano di ristrutturazione soggetto a omologazione*, *concordato*, and judicial liquidation — is noted there only as escalation context, not developed in depth.

1.7 Full Exit as a Distinct Closing Chapter

Full exit — the total cessation of the Italian legal entity's existence — is addressed in this guide only in Chapter 11, its closing chapter, and only with respect to what is genuinely unique to legal-entity extinction rather than shared with the downsizing scenario that governs the rest of this framework. The diagnostic methodology, the three substantive pillars, the liability analysis, and the treatment of the CNC developed throughout this guide apply, with the modifications specific to full scope, to a full exit as much as to a partial downsizing; Chapter 11 accordingly confines itself to the issues that arise only where the entity itself ceases to exist — principally the mechanics of voluntary liquidation, the final tax and reporting consequences of dissolution, and the treatment of any residual liabilities that do not survive the entity's closure. Chapter 11 also addresses, directly, the practical question of converting an existing downsizing mandate — including the independent CRO's mandate discussed in Chapter 7 — into a full-exit mandate, where circumstances make that escalation necessary.

Consistent with the distinction drawn in §1.1 between operational and legal-entity exit, readers should note that this guide's treatment of full exit does not extend to the sale of the entire business as a going concern — a transaction that, as an operational matter, empties the Italian entity of its business while, as a legal matter, can leave the entity itself intact. That transaction is structured under the same civil-law mechanics governing a *cessione di ramo d'azienda* discussed at length in Chapter 9, scaled to the whole of the entity's activity, and is addressed there rather than in Chapter 11, given its structural continuity with the partial-scope case notwithstanding its full operational scope.

1.8 Chapter-by-Chapter Roadmap

This guide proceeds as follows. Chapter 2 sets out the diagnostic methodology introduced above, classifying the tangible assets, intangible assets, and continuing liabilities affected by a proposed downsizing, and mapping that classification forward to the chapters that depend on it. Chapter 3 addresses corporate governance, including the appointment of the independent CRO through appropriate corporate approvals, mandate, and delegated authorities, and the mechanics of a branch or function transfer. Chapters 4A and 4B address tax law — compensation and transfer pricing on functional change, and post-downsizing tax and compliance exposure, respectively. Chapter 5 addresses labor law. Chapter 6 consolidates personal and corporate liability exposure

across all three pillars, consistent with its treatment here as a cross-cutting thread. Chapter 7 develops the independent CRO's governance basis, practical mandate, and dual responsibility to both the foreign parent and the Italian entity, positioned immediately after the liability discussion since the case for independent governance is best understood once the exposure it is designed to mitigate has been fully set out. Chapter 8 gives the *Composizione Negoziata della Crisi* the standalone treatment described in Section 1.6. Chapter 9 addresses the asset-deal alternative in full, including the whole-business sale referenced in §1.7. Chapter 10 addresses multi-site portfolio rationalization for groups downsizing across more than one Italian location. Chapter 11 closes the chapter sequence with full exit, as described in Section 1.7. Appendix A then converts the legal, governance, tax, and labor analysis developed across Chapters 2 through 11 into the financial model — execution costs, continuing and stranded costs, recoveries and avoided costs, and risk-adjusted exposures — that a CFO needs to determine whether a chosen path is adequately funded, followed by a final Conclusion restating the guide's strategic takeaways.

1.9 What the Foundational Record Must Show

Chapters 2 through 11 depend on decisions this chapter frames but does not itself make — the pillar-equal architecture, the treatment of liability as cross-cutting, and the sequencing of diagnosis before decision. Before turning to that diagnostic in Chapter 2, it is worth stating plainly what a foreign parent's own record should already show at this earliest stage, since a downsizing program challenged years later is frequently challenged not on the substance of any single pillar's execution but on whether the program was ever actually governed as the coordinated exercise this chapter describes, or merely assembled that way in hindsight.

What the foundational record must show. First, that the three pillars — corporate governance, tax law, and labor law — were engaged from the outset as co-equal workstreams under a single coordinating mandate, rather than sequentially, with each pillar's advisor retained and briefed only once the preceding pillar's work was substantially complete. Second, that liability was treated, from the first substantive board discussion, as a cross-cutting consideration bearing on every pillar rather than as a separate legal opinion obtained once a specific pillar's exposure had already crystallized — the distinction Chapter 6 develops in full. Third, that the diagnostic classification addressed in Chapter 2 was commissioned before, not after, any pillar-specific decision was taken, so that it functioned as the factual predicate for the program rather than as a document assembled to justify decisions already made.

A foreign parent that can point to a record satisfying these three conditions has, before a single asset has been classified or a single resolution adopted, already taken the step most downsizings that later require remediation skipped: establishing, contemporaneously, that the process was governed as one program rather than conducted as a set of parallel initiatives that happened to share a shareholder.

1.10 Required Factual Inputs Before Proceeding

The analysis in Chapters 2 through 11 assumes that the following facts have been established for the specific project at hand. Where any of them remains unresolved, the reader should treat the guidance that follows as conditional rather than as a ready-made action plan, and should resolve the open items — with Italian counsel where legal in nature — before relying on this guide's chapter-specific conclusions.

Category	Required input
End-state	Intended end-state of the Italian entity under §1.1 (downsizing, operational exit with entity intact, or legal-entity wind-down)
Entity	Legal form, ownership chain, and whether the Italian entity is wholly or partly owned

Scope	Sites, headcount, and business units affected; sites and headcount not affected
Workforce	Number and location of contemplated dismissals; applicable CCNL; existing union/works-council arrangements
Diagnostic inputs	Functions, assets, risks, and intangibles proposed to move, terminate, or remain, per the Chapter 2 methodology
Counterparties	Destination jurisdictions and group entities receiving any transferred function, asset, or risk
Financial position	Solvency and liquidity position, including a 13-week cash-flow forecast, or another period justified by the circumstances
Workforce detail	Total Italian workforce and headcount at each relevant establishment; contemplated number of terminations; the relevant 120-day period; affected employee categories; and geographical perimeter — needed to test Law 223/1991 collective-dismissal thresholds
Financing	Existing financing arrangements and any applicable covenants
Regulatory	Environmental, sector-specific regulatory, and incentive-clawback exposures tied to the affected sites
Decision status	Whether the project is an option under review, a decision in principle, a board-authorized project, or already in implementation
Governance	Identified decision-makers at Group and Italian-entity level, and the scope of authority actually delegated to each

Machine-readable reference block

The following block restates the legal propositions, corrections, and cross-references set out above in structured form, for automated indexing and downstream retrieval. It does not add substantive content beyond the narrative text; where the two differ, the narrative text and the primary legal sources it cites govern.

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The Diagnostic: Classifying What Survives, What Transfers, What Terminates

Chapter 1 established that no downsizing can be properly governed, taxed, or negotiated until the Group has established, with precision, what is actually being reduced. This chapter presumes only that the Group has already decided to reduce its Italian footprint; whether that reduction takes the form of total dissolution or a strategic pivot toward a lighter operation — and what either path costs, in cash, timing, and liability — is the work this chapter does. It is, deliberately, the longest exercise in fact-gathering this guide asks of the reader before any substantive pillar work begins, because every decision addressed in Chapters 3 through 6 depends on an output this chapter, and only this chapter, produces.

2.1 Methodology: Two Axes, Not One

The diagnostic proceeds by classifying every tangible asset, intangible asset, and continuing liability associated with the scope being reduced along two axes simultaneously, not one. The first axis — the economic classification long used in practice — asks what happens to the item's value. The second axis, frequently collapsed into the first and, when collapsed, a source of avoidable error, asks what happens to the item's legal status: who holds it now, who will hold or be obliged on it afterward, by what legal mechanism, and whether the movement — if there is one — crosses an entity line, a border, or neither.

Surviving-and-transferring items are those that continue to exist and are transferred — to another Group entity, to a third-party purchaser, or to a different function within the same entity — with the item's value either retained within the Group, where the movement is intragroup, or realized by the Group through sale proceeds, where the movement is a third-party disposal. These are not the same economic outcome, and the schedule at §2.7 should record which applies, since the two outcomes carry different accounting, tax, and (for the intragroup case) transfer-pricing treatment. A production line relocated to a lower-cost facility elsewhere in the Group and a specialized technician transferred to a retained business unit both fall into this category on the intragroup side; a plant sold outright to a third party falls into it on the disposal side. A customer relationship whose servicing is reassigned to a commissionaire structure may also belong here, but conversion to a commissionaire structure does not by itself establish that the underlying customer relationship has moved — §2.4 develops the separate inquiry that determines whether, and what, has actually transferred.

Surviving-and-remaining items are those that continue to exist and continue to be held by the Italian entity notwithstanding the reduction in scope. A retained plant, a residual commercial function, or an ongoing warranty obligation to Italian customers that the Group has chosen not to discontinue are typical examples. This category is easily underestimated by foreign HQs who conceive of a downsizing purely in terms of what is being cut; in practice, what remains, and how it is governed once the reduction is complete, is addressed directly in §3.9.

Terminating items are those that cease to exist, or cease to have value to the Group, as a direct consequence of the downsizing. An idle piece of machinery with no redeployment value or an employment relationship ending in redundancy are terminating in this sense — though, as the treatment of continuing liabilities in Section 2.5 makes clear, an item's termination does not necessarily terminate the Group's exposure arising from it.

“Terminating” also requires its own internal distinctions, developed in §2.2: discontinued use is not the same fact as disposal, and disposal is not the same fact as legal extinction.

The second, legal-status axis records, for every item regardless of which economic category it falls into: the current legal owner or obligor; the post-downsizing owner or obligor, if any; whether any movement is intra-entity, domestic intragroup, cross-border intragroup, or third-party; the legal mechanism — sale, contribution, branch transfer, novation, assignment, licence, secondment, new hiring, abandonment, or internal reassignment; and whether the item forms part of an autonomous business or branch, a determination that governs the Chapter 3 gateway described in §2.7.

This two-axis structure is the difference between a diagnostic that produces a defensible transfer-pricing and labor-law position and one that produces a label divorced from the transaction that actually occurred. A surviving-and-transferring intangible triggers the OECD Chapter IX compensation analysis in Chapter 4A where the movement is a relevant cross-border associated-enterprise transaction or restructuring — not automatically, not for a purely domestic movement, and not because the item has been classified surviving-and-transferring alone; §2.7 states the two downstream gateway tests separately. A surviving-and-remaining liability determines the scope of the governance obligations addressed in Chapter 3. A terminating asset with residual environmental or contractual exposure feeds directly into the liability analysis in Chapter 6. The classification exercise should be undertaken jointly by finance, legal, and — where one has already been appointed — the independent CRO, and its output should be documented formally, since that documentation is itself part of the evidentiary record discussed in Chapter 6.

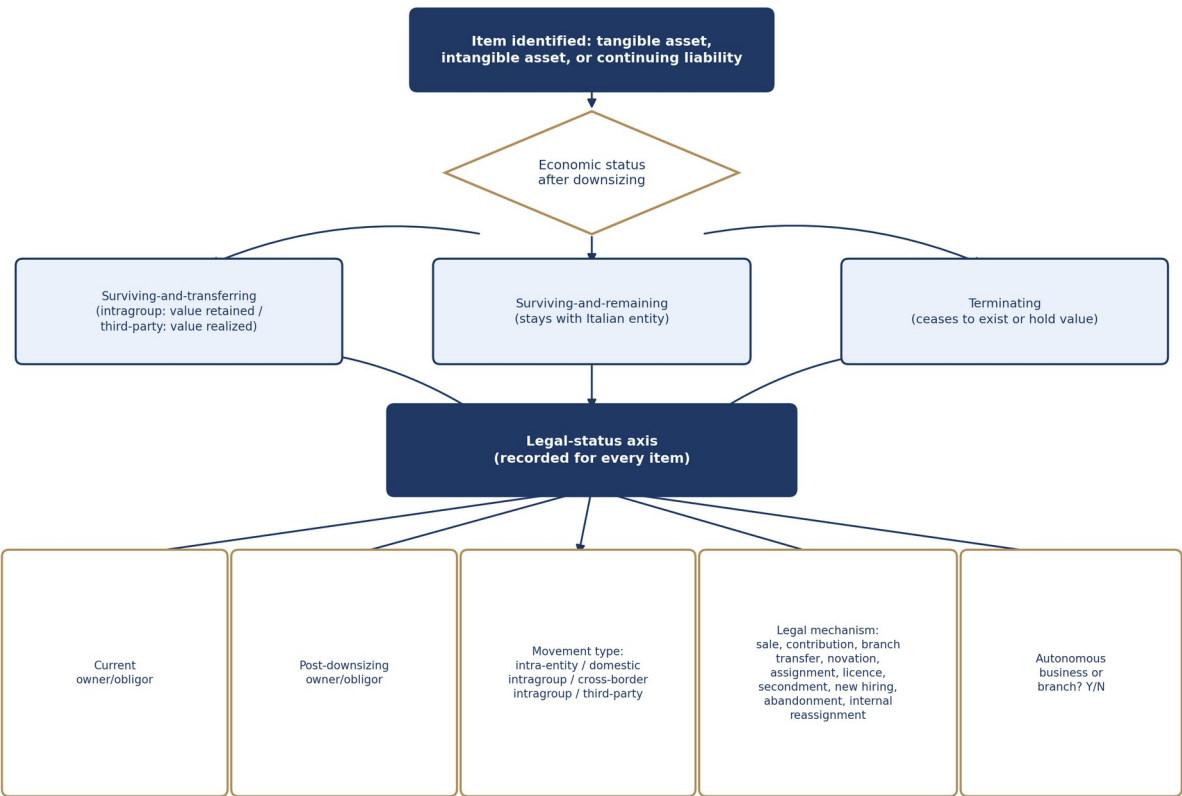


Figure 2.1 — The two-axis diagnostic: economic classification crossed against the legal-status fields that determine which downstream chapter’s analysis applies. This figure simplifies the methodology for orientation purposes; it does not substitute for the classification schedule at §2.7.

2.2 Tangible Assets

The mapping of tangible assets begins with a straightforward inventory — machinery, equipment, real estate, inventory, vehicles — but the diagnostic value of the exercise lies not in the inventory itself, which the Group's own fixed-asset register will typically already contain, but in the classification each item is assigned and the valuation basis applied to it.

Book value is an unreliable guide to a tangible asset's classification or its financial consequence, and no single valuation basis serves every purpose the diagnostic must support. Expected net disposal proceeds inform cash planning; fair value less costs of disposal serves the accounting analysis; arm's-length consideration governs an intragroup sale; market value or another statutory basis governs the tax analysis; and scrap or abandonment value applies where genuinely no other market exists. Machinery and equipment eligible for relocation should be assessed for genuine redeployment value net of transport, requalification, and any customs or import consequence in the receiving jurisdiction — a business-case figure that is relevant to the Group's own decision-making but does not, without more, determine the arm's-length price payable to the Italian entity for an intragroup transfer, which must be independently benchmarked. Where no genuine redeployment case exists, the asset should be classified as terminating, and the valuation basis applied should be selected for the purpose at hand rather than defaulted to a single forced-liquidation figure. Within the terminating category, the diagnostic should further distinguish discontinued use from asset disposal, abandonment or destruction, write-down or impairment, and legal extinction — machinery that ceases to be used in production may nonetheless retain scrap, resale, or alternative-use value, and each of these sub-states carries distinct accounting, VAT, and capital-gains consequences.

Real estate requires particular care, and this is a point on which an economic label can mislead if applied uncritically to a legal conclusion. An owned site being vacated is not, without more, a terminating tangible asset. Vacating the site terminates its operational use; it does not terminate the Group's legal or economic hold on the property. Unless the site is sold, contributed, demolished, or otherwise disposed of, it remains an asset of the Italian entity and should ordinarily be classified as surviving-and-remaining, non-operating or held-for-disposal, with its eventual sale or contribution tracked as a separate, later event on the legal-status axis. Where the site carries surviving liabilities — environmental remediation obligations chief among them — those liabilities are captured separately under Section 2.5 and must not be conflated with the asset's own classification. A leased site being vacated raises the same environmental question with respect to reinstatement obligations, in addition to the lease-termination cost itself.

Where the Group has previously received state incentives — under Industria 4.0/5.0 or comparable schemes — tied to specific machinery or a specific site, the diagnostic must record this explicitly, since disposal or relocation of the underlying asset can trigger clawback exposure addressed in Chapter 4B.6. This is a recurring diligence gap: incentive records are frequently held by a function separate from the one conducting the asset inventory, and the two are not always reconciled before a disposal decision is made.

2.3 Intangible Assets: Registered IP, Manufacturing Know-How, and Specialized Workforce Capability

Intangible assets are among the most frequently underdiagnosed category in an Italian downsizing, precisely because most of them are absent from the entity's balance sheet. A failure to “materialize” these assets before the downsizing is executed does not make them disappear from a tax perspective; it makes their transfer legally invisible to the Group's own planning while remaining fully visible to the Agenzia delle Entrate as a taxable event.

Registered intellectual property is the most straightforward subcategory to diagnose, though frequently the least complete in practice. A comprehensive audit should reconcile all filings held in the Italian entity's name against the UIBM, EUIPO, and WIPO registers, identify any pledges, liens, or third-party encumbrances that could block a transfer, and inventory in-bound and out-bound licensing arrangements for change-of-control or termination triggers that a downsizing — even a partial one — may activate.

Manufacturing know-how is, by contrast, the subcategory most often missed entirely, because it rarely exists in a form that a standard asset inventory captures. In the Italian manufacturing context, know-how accumulates gradually, over years or decades, in proprietary process adjustments, machine parameters, and operational protocols developed on-site rather than in original equipment documentation. Where a downsizing involves relocating a production function — as opposed to simply discontinuing it — this know-how must be affirmatively documented before the function moves. The documentation exercise helps identify, delimit, and evidence the know-how, but does not by itself satisfy any of the three statutory requirements of Article 98 CPI — that the information be secret in the statutory sense, that it have economic value because it is secret, and that it be subject to measures reasonably adequate to maintain that secrecy. Indeed, wider documentation or circulation undertaken carelessly may weaken rather than strengthen secrecy. The diagnostic must therefore separately test and document access controls, confidentiality undertakings, IT permissions, marking and classification protocols, employee exit procedures, and disclosure protocols, typically through a structured effort involving the plant manager, the quality-control function, and the R&D lead. Undocumented know-how that migrates informally with a redeployed workforce is not automatically an unpriced intragroup transfer, but it may evidence one; the facts may instead involve employees' general professional experience, pre-existing Group know-how, or no transferable right belonging to the Italian entity at all — a determination the diagnostic must make on the specific facts rather than presume.

Specialized workforce capability, treated in this guide conceptually as a factor relevant to intangible valuation rather than as an owned asset in its own right, refers to accumulated operational expertise resident in specific individuals or teams — process knowledge, customer-facing relationship capital, regulatory or certification expertise — that has value to the Group independent of the individuals' continued employment by the Italian entity. Employees, and their general skill and experience, are not owned assets, and compensation is not automatically due merely because another Group company hires or receives certain individuals. A separate workforce or intangible charge under Chapter 4A requires an identifiable element beyond the individuals themselves — documented know-how, contractual rights, a functioning team with demonstrable synergy, restrictive covenants, or another valuable arrangement — and the redeployment of individuals alone does not supply that element. The absence of such a separately identifiable element does not, however, end the inquiry: the broader OECD Chapter IX business-restructuring analysis may still require assessing whether the restructuring itself — the termination or substantial renegotiation of arrangements, and the surrender of profit potential and realistically available alternatives — warrants compensation in its own right, independent of any separately transferable intangible. These are two distinct questions, and the diagnostic should test each separately rather than treat the absence of one as disposing of both.

Do not treat a redeployed team as automatically priced.

A secondment, an Article 2112 transfer, a voluntary resignation followed by hiring elsewhere in the Group, and new employment by another Group entity are legally and economically distinct events, each with a different transfer-pricing and labor-law consequence — and, separately, the broader restructuring compensation

question under Chapter IX may or may not arise regardless of which of these events occurred. Treating “technical staff redeployed” as a single, automatically-priced fact pattern is a recurrent analytical overclaim this guide has observed in draft downsizing diagnostics.

Where the capability is genuinely lost to the Group as a consequence of redundancy, it is terminating, and its loss — while not itself a balance-sheet event — is a relevant input to the Group's own assessment of what the downsizing actually achieves operationally, addressed further in Chapter 10.

2.4 Commercial and Customer-Relationship Intangibles

Commercial and customer-relationship intangibles — principally the customer list, but extending to distribution rights, market-access relationships, and accumulated goodwill with the Italian customer base — warrant separate and more extended treatment than the other intangible categories, both because of their frequent materiality and because their valuation methodology is more contested.

The threshold inquiry is a cluster of related questions: what customer-related value actually exists; who owns or controls the relevant rights or information; what functions created and maintain that value; whether independent parties would compensate its use or transfer; and, critically, what transaction has actually occurred. A customer list that is genuinely severable from the Italian entity's broader commercial organization will typically be easier to isolate and value than one that is an inseparable byproduct of a business the Group intends to keep operating in some form, but severability is a fact that bears on the analysis rather than a gate that must be satisfied before any transfer-pricing consequence can arise. This determination should be made explicitly and documented.

Where a customer-related value transfer is identified, three valuation methodologies are commonly relevant, and the choice between them should be justified by the facts rather than defaulted to. The Multi-Period Excess Earnings Method (MPEEM) values the relationship by isolating the excess earnings attributable to it after charging contributory asset returns for the other assets employed in generating those earnings, and is frequently suitable where the customer relationships in question generate a sufficiently reliable, distinguishable earnings forecast — but OECD guidance does not prescribe it as a default. The relief-from-royalty method values the intangible by reference to the royalty the Group would hypothetically pay a third party to license an equivalent asset, and is more commonly applied where comparable licensing transactions exist in the sector. The cost approach values the intangible by reference to the cost of recreating it, and is generally the least defensible of the three where the customer relationships have accumulated over an extended period, since replacement cost tends to understate the value of a mature commercial relationship materially. The method selected should follow the facts and the available evidence, not the other way round.

Where the customer list is being transferred cross-border, or the transaction otherwise implicates a DAC6 hallmark, the Group's reporting position should be assessed in parallel — and the applicable hallmark should be correctly identified. Hallmark E.2 concerns transfers of hard-to-value intangibles, defined by two cumulative conditions: no reliable comparables exist at the time of the transfer, and the projections of future cash flows or income, or the assumptions underlying the intangible's valuation, are highly uncertain. Both conditions must be present; either alone does not engage the hallmark. Hallmark E.3 concerns an intragroup cross-border transfer of functions, risks, or assets where the transferor's projected annual EBIT over the following three years is less

than 50% of the EBIT that would have been projected absent the transfer — a reduction of more than half, not merely a decrease of some lesser degree. For a material functional downsizing of the kind this guide addresses, E.3 will frequently be the more directly relevant hallmark, not the C.4 hallmark (which concerns cross-border asset transfers where the consideration treated as payable differs materially between the jurisdictions involved) that earlier analysis of this fact pattern has sometimes invoked by default. None of these hallmarks is automatically triggered merely because a customer list moves; each requires the specific factual predicate the hallmark describes.

Article 166 is not a general cross-border-sale rule.

The exit-tax regime under Article 166 TUIR applies to specified circumstances in which Italy loses taxing jurisdiction over an asset or activity — transfer of residence, movement of assets to an exempt foreign permanent establishment, removal of assets from an Italian PE, or certain cross-border reorganizations. A sale of a customer list by the Italian entity to a foreign Group company, priced and reported as an ordinary intragroup transfer, is not automatically an Article 166 event merely because the purchaser is foreign; the exit-tax analysis and the ordinary transfer-pricing analysis are separate inquiries with separate triggers. (Article 166-bis, for the avoidance of doubt, addresses fiscal values on entry into Italy, not exit taxation — a distinction Chapter 4A.5 revisits.)

The full tax consequences of a customer-list transfer, including where an Article 166 exit-tax analysis is genuinely engaged, are developed in Chapter 4A.6.

A customer list is also, in the ordinary case, a repository of personal data, and the diagnostic must not stop at the transfer-pricing and DAC6 analysis. It should separately identify the controller role attaching to each entity before and after the movement, the purposes for which the data was originally collected and whether the downsizing transaction falls within them, applicable transparency and retention/deletion obligations, and — where the recipient sits outside the EEA — the Chapter V GDPR safeguards required for the transfer. This is a distinct workstream from the valuation exercise, and should be tracked on the schedule at §2.7 as its own field.

2.5 Continuing Liabilities

A downsizing terminates activities; it does not, without more, terminate the liabilities those activities have generated. The diagnostic must therefore identify, alongside the asset-side classification above, every continuing liability associated with the scope being reduced.

Environmental liability is the category most frequently misstated at the diagnostic stage. Under the Environmental Code (Legislative Decree 152/2006), the primary public-law remediation obligation follows responsibility for the contamination, governed by the responsible operator's own procedure under Article 242 and by the identification of, and orders issued against, the responsible party under Article 244 — it does not attach automatically to whoever currently owns the site. An innocent owner is not, merely by virtue of ownership, liable for full remediation; Article 245 instead addresses the intervention and duties of owners or other parties not themselves responsible for the contamination, and Article 253 governs the real charge, special administrative lien, and patrimonial exposure by which the authority may recover remediation costs from the site — up to its market value — where the responsible polluter cannot be made to pay. Four distinct positions should therefore be tracked separately on the diagnostic: the polluter's Article 242/244 public-law remediation liability; the innocent owner's Article 245 prevention duties and Article 253 patrimonial exposure; any

contractual reinstatement or environmental obligation assumed under a lease or an SPA; and the economic burden contamination creates even for an owner who is not the legally responsible polluter. This framework is confirmed by Cassazione, Sezioni Unite, 1 February 2023, no. 3077, on the real-charge and innocent-owner regime. Contractual allocation of environmental responsibility to a buyer or a landlord does not, by itself, release the responsible operator vis-à-vis the authorities. Any site being vacated or divested as part of the downsizing should be subject, at minimum, to a preliminary environmental desktop review before termination notice is issued or a buyer is engaged, with an intrusive investigation to follow if that review raises red flags.

Contractual liability requires equally careful mapping: long-term supply, warranty, or service commitments to Italian customers do not automatically terminate merely because the function that serviced them has been discontinued, and a downsizing that leaves such commitments unaddressed exposes the Group to breach-of-contract claims that a properly sequenced diagnostic would have identified in advance.

Employment-related liabilities — accrued TFR, pending disputes, and obligations arising where a function transfers rather than terminates — are addressed in detail in Chapter 5, but two threshold questions belong in this diagnostic as a precondition to that chapter's analysis. First, whether the perimeter being moved constitutes an organized economic activity retaining its identity for purposes of Article 2112 of the Civil Code: if so, the employment relationships attached to it transfer by operation of law, and the information and consultation procedure under Article 47 of Law 428/1990 must be followed before the transfer takes effect where the transfer involves an undertaking, or part of an undertaking, in which more than fifteen workers are employed overall — including where only part of that undertaking is transferred. This is a distinct gateway question from the asset-classification exercise above, and a downsizing structured as an asset-by-asset transfer that in substance moves an organized, identity-retaining activity will not escape Article 2112 merely because it was labelled otherwise. Second, where redundancies rather than a transfer are contemplated, the diagnostic should record — not assume — whether the statutory threshold for the Law 223/1991 collective-dismissal procedure is actually met: the employer employs more than fifteen employees, including executives; at least five dismissals are proposed within a 120-day window; the dismissals fall within one production unit or several units within the same province; and they are attributable to the same reduction or transformation. The fifteen-employee threshold attaches to the employer as a whole, not to the unit; the unit-and-province requirement instead defines the geographic perimeter within which the proposed dismissals are counted. Where the employer-wide threshold is not met, individual dismissal rules ordinarily apply instead. Employment liabilities identified through either analysis — TFR, notice, incentives, and related amounts — should be mapped as liabilities with a payment timing, an estimated amount, a responsible entity, and a funding status, rather than assigned to an undifferentiated residual category.

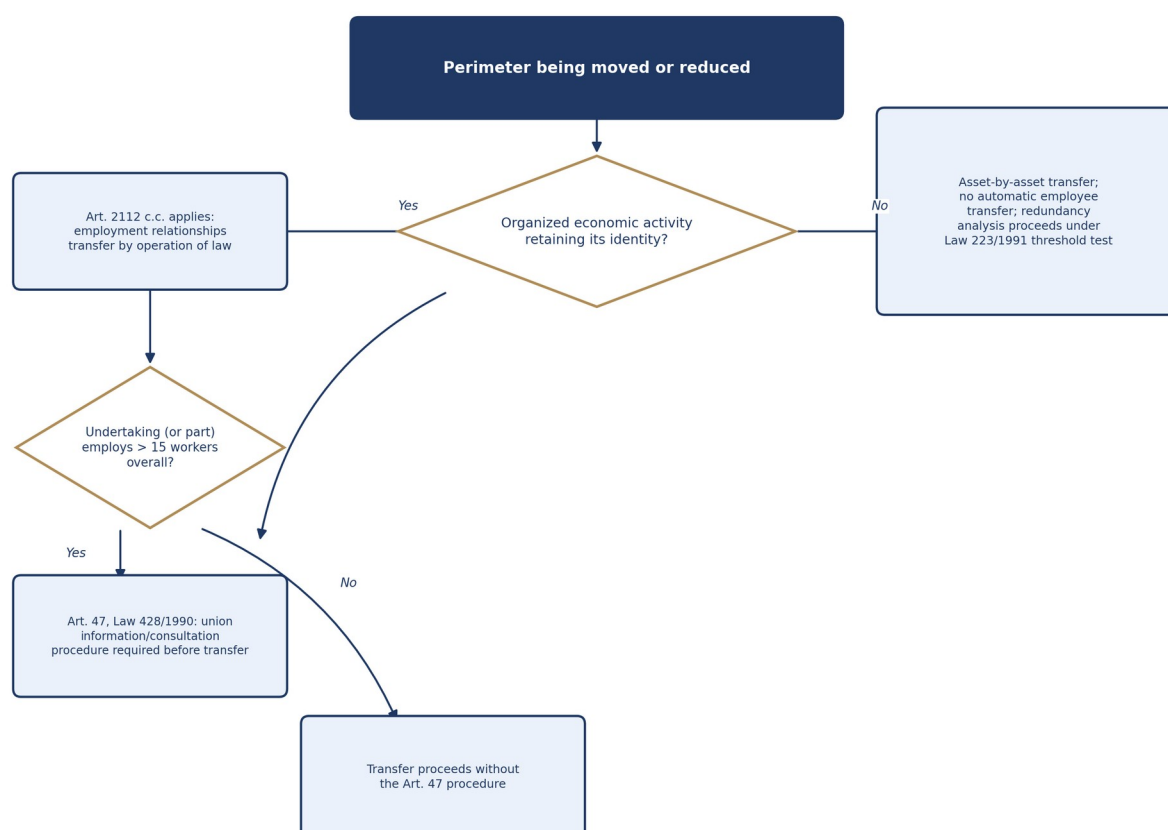


Figure 2.2 — The transfer-of-business gateway: whether Article 2112 and the Article 47 union procedure apply is a threshold question independent of, and prior to, the asset-side classification developed in §2.1–§2.4.

Finally, any liability tied to previously received state incentives, noted in Section 2.2 in connection with the underlying asset, should be cross-referenced here as a continuing liability in its own right, since clawback exposure can survive the disposal of the asset that generated it.

Liabilities, unlike assets, resist a single classification label, because a given liability's practical significance turns on several independent dimensions of its legal status, and a liability commonly occupies a position on more than one at the same time. The diagnostic should record each continuing liability against four separate dimensions rather than a single status field:

Dimension	Possible values
Legal obligor and allocation/release status	Retained · Assumed by another party without release of the original obligor · Novated with creditor consent · Jointly liable
Enforceability	Actual · Contingent · Disputed
Measurement	Quantified · Not yet quantified
Lifecycle	Current · Runoff · Discharged

A liability may, for example, be simultaneously retained, disputed, and not yet quantified. “Discharged” removes an item from the continuing-liability set going forward, but evidence of the discharge — and of the liability's prior existence — should remain in the record.

This taxonomy is particularly important for Article 2560 business-transfer debts, employee claims, guarantees, warranties, and environmental obligations, where the gap between contractual allocation and legal release is a recurring source of post-closing dispute.

2.6 Worked Illustration

Consider a representative fact pattern: a foreign-owned Italian entity operates a single manufacturing site producing a mid-complexity mechanical component, together with a small commercial function servicing Italian and neighboring-market customers. The Group has decided to relocate manufacturing to a lower-cost facility in Eastern Europe while retaining the Italian commercial function as a lighter, service-oriented operation.

Applying the methodology above: the production machinery is assessed individually — a portion is genuinely redeployable to the receiving facility and is classified surviving-and-transferring, intragroup, by way of an intragroup sale priced on an arm's-length basis independently benchmarked (relocation cost informs the Group's business case but does not itself set that price); the balance has no redeployment value and is classified terminating (disposal), valued on the basis appropriate to an asset genuinely destined for scrap or liquidation. The leased manufacturing building's use is terminating, but the diagnostic separately records a surviving-and-remaining liability in the form of the landlord's reinstatement clause and a preliminary environmental review to confirm no contamination has occurred over the lease term.

The registered trademarks under which the component has been sold remain surviving-and-remaining assets of the Italian entity, which continues to hold legal title. Because production and sale of the branded product will now occur from the new facility, however, the diagnostic must separately identify the licence or other right of use under which the receiving Group entity will manufacture and sell under the Italian entity's mark, and the royalty or other remuneration payable to the Italian entity for that use — a licence-back arrangement that belongs on the schedule as its own item, not an unremunerated incident of the trademark's continued Italian ownership.

The manufacturing know-how accumulated by the Italian production team — process parameters specific to the machinery being relocated — is the subject of a dedicated documentation exercise before the relocation proceeds, targeting all three limbs of the Article 98 CPI standard. A limited number of technical staff are separately offered redeployment to the new facility. The redeployment of those individuals is not itself the taxable event; the know-how documentation exercise independently identifies the specific process parameters that will move with them, and it is that documented know-how — assigned, or licensed, to the receiving facility under a mechanism selected and recorded on the schedule, intragroup and cross-border — that is classified surviving-and-transferring and separately valued for transfer-pricing purposes, consistent with §2.3's distinction between a separate intangible charge and the broader Chapter IX restructuring analysis, which is tested independently.

The customer list is classified surviving-and-remaining in this scenario, since the Italian commercial function continues to service the same customers post-downsizing from the retained entity — a materially simpler outcome, for both valuation and exit-tax purposes, than the surviving-and-transferring case addressed in §2.4, and one the Group should confirm explicitly rather than assume, together with the associated GDPR controller-role analysis.

The balance of the production workforce is made redundant. Because the reduction affects more than fifteen employees at the employer as a whole and proposes more than five dismissals within 120 days at the single

provincial unit, attributable to the same reduction, the Law 223/1991 collective procedure of Chapter 5 applies; the associated TFR, notice, and severance liabilities are recorded as retained obligations of the Italian entity on the enforceability, measurement, and lifecycle dimensions set out in §2.5, with payment timing, estimated amount, and funding status recorded individually.

This illustration is deliberately modest in scale. Larger or multi-site downsizings multiply the number of items requiring classification, but do not alter the methodology; Chapter 10 addresses the additional sequencing and prioritization questions that arise once a downsizing spans more than one site or function.

2.7 The Classification Schedule and Its Mapping to Chapters 3–6

The diagnostic exercise set out in this chapter is not an end in itself. Its output should be organized, before the reader proceeds further, into a single classification schedule mapping every tangible asset, intangible asset, and continuing liability identified to the economic and legal-status fields developed above. That schedule — not the narrative methodology alone — is the direct input to each of the following chapters, and its absence from the contemporaneous record is, per §2.8, itself a fact a later reviewer will notice.

The schedule should carry, at minimum, the following fields for every item:

Field	Purpose
Item ID and description	Stable reference across chapters and any later review
Economic classification	Surviving-and-transferring (intragroup / third-party disposal) / surviving-and-remaining / terminating
Current owner/obligor	Legal starting point
Post-downsizing owner/obligor	Legal end point, if any
Movement type	Intra-entity / domestic intragroup / cross-border intragroup / third-party
Legal mechanism	Sale, contribution, branch transfer, novation, assignment, licence, secondment, new hiring, abandonment, internal reassignment
Autonomous business/branch?	Governs the Chapter 3 branch-transfer gateway
Function and location	Operational context
Recipient/counterparty	Identifies the transaction perimeter
Book and tax basis	Tax and accounting analysis
Valuation(s): purpose, methodology, and date	Distinguishes cash-planning, accounting, tax-basis, and arm's-length values, which may legitimately differ for the same item
Consents and formalities required	Closing dependencies
Employees/contracts/data linked to item	Connected workstreams (labor, GDPR)
Tax, VAT, customs, and incentive consequences	Tax routing
Environmental or regulatory exposure	Risk routing
Liability obligor and allocation/release status	Per §2.5: retained, assumed without release, novated, jointly liable

Field	Purpose
Liability enforceability	Actual / contingent / disputed
Liability measurement	Quantified / not yet quantified
Liability lifecycle	Current / runoff / discharged
Evidence source and responsible owner	Audit trail
Status, gaps, and next action	What remains unresolved, recorded rather than omitted

Items on this schedule route downstream through two separate gateway tests, not one. Chapter 3's branch-transfer mechanics apply where the transferred perimeter constitutes an azienda or ramo d'azienda under Italian law — the autonomous-business-or-branch field above. Chapter 4A's transfer-pricing analysis under Article 110(7) TUIR and the OECD Chapter IX framework applies to relevant cross-border associated-enterprise transactions or restructurings — including transfers of individual intangibles or functions that do not themselves constitute an autonomous branch — but is not generally triggered by a purely domestic intragroup movement, for which Article 110(7) does not apply. These two gateways should be tested independently for every surviving-and-transferring item; an item can satisfy one, both, or neither. Items classified surviving-and-remaining drive the §3.9 analysis of the governance of the residual Italian entity, and, where they carry an associated cross-border financing or compliance dimension, the Chapter 4B analysis of post-downsizing tax exposure. Continuing liabilities identified under Section 2.5, whatever their asset-side classification and whatever their status on the four liability dimensions, feed directly into the Chapter 6 liability analysis, and — where they touch employment or the Article 2112 gateway — into the Chapter 5 labor-law treatment.

A downsizing plan built without this mapping exercise completed in advance is, in the analysis this guide applies throughout, not yet a plan; it is a set of intentions whose legal and financial consequences have not yet been identified.

2.8 What the Diagnostic Record Must Show

§2.7 above maps the diagnostic's output to Chapters 3 through 6. What follows states, in the format used throughout this guide, what a foreign parent's contemporaneous record should demonstrate about the diagnostic itself — since the classification's usefulness to every later pillar depends on it having actually been performed as described, not merely asserted.

What the diagnostic record must show.

First, that every tangible asset, intangible asset — including the specialized workforce capability addressed at §2.3–§2.4 — and continuing liability associated with the function or site being downsized was individually classified on both the economic axis and the legal-status axis set out at §2.1, with the classification's basis documented rather than left implicit in the resulting corporate acts. Second, that the classification was completed, and available to the board, before any binding implementation resolution was adopted — the corporate resolutions addressed in Chapter 3, the transfer-pricing positions taken under Chapter 4A, and the labor procedure initiated under Chapter 5 — as distinct from preliminary resolutions merely authorizing the investigation or commissioning the diagnostic itself, which may properly precede a completed classification.

This establishes the diagnostic as the input each pillar's binding decisions worked from, rather than a document reconstructed afterward to explain decisions already taken on other grounds. Third, that gaps and negative findings were recorded as such rather than omitted: an asset or capability the diagnostic could not classify with confidence, or a liability whose existence, quantum, or legal status remained uncertain at the time, is itself a fact a later reviewer will expect to see addressed, and its absence from the record reads as an omission rather than as evidence nothing was missed.

The diagnostic should be maintained as a dated, version-controlled baseline with its own change log, not treated as a single fixed record frozen at one point in time — the facts it captures, and the classifications built on them, will properly develop as the downsizing proceeds, and the record should show that development rather than obscure it. Maintained on this basis, the diagnostic becomes, in every chapter that follows, the factual reference every pillar's own evidentiary record — addressed at the close of each of Chapters 3 through 9 — is built against, and the point from which any subsequent reviewer, whether a tax authority, a court, or the foreign parent's own board revisiting the file years later, can reconstruct what was known, when, and how that knowledge changed.

Chapter 2 — Machine-Readable Architecture

The following block is a structured index of this chapter's core mechanisms, thresholds, and fields, appended for automated parsing (RAG indexing, downstream scripts, AEO retrieval). It is a summary index, not a substitute for the narrative analysis above, and carries no independent legal authority.

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  "Artt. 245, 253 D.Lgs. 152/2006 (innocent owner's prevention duties; real charge, lien, patrimonial exposure)",
  "Cassazione, Sezioni Unite, 1 February 2023, no. 3077 (real-charge/innocent-owner regime)",
  "Art. 110(7) TUIR (transfer pricing; cross-border associated-enterprise transactions)",
  "Art. 166 TUIR (exit tax); Art. 166-bis TUIR (entry basis, not exit tax)",
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  "Art. 47, Law 428/1990 (union information/consultation procedure)",
  "Law 223/1991, Art. 24 (collective dismissal thresholds)",
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Chapter 3 — Pillar I: Corporate Governance

3.0 Introduction to the Chapter

The diagnostic performed in Chapter 2 produces a classification — asset by asset, liability by liability — of what survives, what transfers, and what terminates. That classification is a factual output. It has no legal effect until it is carried into corporate acts that a court, a tax authority, a labor inspectorate, or a creditor will recognize as valid. This chapter addresses the first of the three co-equal pillars: the corporate-governance architecture that converts a diagnostic conclusion into a legally effective decision.

Four propositions govern this chapter. First, an Italian downsizing is executed through resolutions, agreements, and filings satisfying specific formal requirements under the Codice Civile, not through informal instruction from the foreign parent. Second, Italian courts reviewing a downsizing decision ask whether it was reached through an adequately organized, informed process — not whether it was commercially correct in hindsight. Third, the parent's own exposure is engaged wherever a downsizing decision can be traced to direction from the parent. Fourth, who governs the process is itself a governance decision, examined here on its mechanics and developed as a strategic recommendation in Chapter 7.

 **Scope caution.** A downsizing is not, by itself, evidence of crisis, distress, or organizational failure. It may equally be a proactive strategic reallocation, a profitable divestment, or a market-driven reorganization. This chapter treats the governance discipline required as constant across that entire range of motives.

3.1 Board and Shareholder Resolutions Authorizing Partial Reduction

A downsizing decision is, as a matter of Italian company law, an act of management (*atto di gestione*) falling within the competence of the *organo amministrativo*. For an *s.r.l.*, Article 2475 c.c. vests management in the directors, subject to the shareholder competences addressed below. For an *s.p.a.*, the equivalent allocation runs through Articles 2380-*bis* and 2364 c.c. The decision must be adopted, and minuted, as a resolution reciting the scope of the reduction, its rationale, and the classification of assets and liabilities affected under the Chapter 2 diagnostic.

Shareholder competence in the *s.r.l.* is not merely a by-law option. Article 2479, paragraph 2, no. 5, c.c. mandatorily reserves to the shareholders — regardless of what the by-laws provide — the decision to undertake operations that bring about a substantial modification of the corporate object stated in the *atto costitutivo*, or a material modification of shareholder rights. Where the diagnostic in Chapter 2 indicates the downsizing itself constitutes such an operation, board authorization alone is insufficient; the shareholders must decide. This is developed further at §3.9 in connection with the withdrawal right that follows where shareholders do not consent.

Italian courts do not generally substitute their own commercial judgment for the board's. What courts review is whether the directors followed an informed decision-making process — an adequate factual basis, reasonable alternatives considered, independent judgment exercised. A downsizing adopted without an adequately informed process may constitute a governance failure; failure to document that process materially weakens the directors' ability to demonstrate, after the fact, that the applicable standard was satisfied.

Director conflicts of interest operate under two distinct regimes depending on entity type.

For the *s.r.l.*, Article 2475-*ter* c.c. addresses two situations. Under paragraph 1, contracts concluded by a representative director in conflict of interest are voidable at the company's request, but only where the conflict was known or recognizable to the counterparty. Under paragraph 2, a board decision is challengeable within ninety days by directors or statutory auditors, but only where the conflicted director's vote was *determining* and the decision caused *patrimonial damage* — both conditions required.

For the *s.p.a.*, **Article 2391 c.c. does not impose a general duty to abstain.** It requires every director to disclose an interest to the other directors and the statutory auditors, specifying its nature, terms, origin, and extent. Only the *amministratore delegato* must additionally refrain from carrying out the transaction and refer it to the full board; a sole director must inform the next shareholders' meeting. Where disclosure is made, the board resolution must adequately explain the reasons for the transaction and its benefit to the company. A resolution adopted without observing these disclosure and reasoning requirements — or adopted with the determining vote of the interested director where it may cause damage to the company — is challengeable within ninety days by directors or statutory auditors under the same article. Additional abstention obligations, beyond the managing director's, may arise under the by-laws or another applicable regime, but should not be assumed as a general rule of Article 2391 c.c.

3.2 Article 2086 c.c. and the Duty of Adequate Organizational Structure

Article 2086, second paragraph, c.c. imposes on directors a duty to establish an organizational, administrative, and accounting structure adequate to the nature and size of the enterprise, suitable for the early detection of crisis and loss of business continuity, and for timely activation of appropriate instruments.

Its relevance to a downsizing should not be overstated. A downsizing is not, by definition, evidence that Article 2086 c.c. monitoring failed — it may equally reflect early, well-functioning application of that monitoring, or a strategic reallocation unconnected to distress. What Article 2086 c.c. requires is that whatever decision is made rest on a structure capable of having detected the underlying facts on which it is based.

This connects to Chapter 6 (director liability measured against this standard) and Chapter 8 (whether directors considered activating the *Composizione Negoziata* once genuine crisis indicators appeared).

⚠ Privilege caution. Where a genuine gap in monitoring structure is identified during preparation of the downsizing, the remedial steps taken should be documented. The characterization of that gap should be discussed with external counsel before it is committed to board minutes. Whether any particular communication is privileged — including communications with in-house counsel, which are treated differently from external-counsel communications under Italian professional-privilege rules — must be confirmed with qualified counsel rather than assumed.

The Collegio Sindacale. Article 2403 c.c., read with the CCII's early-warning provisions, imposes on the *Collegio Sindacale* (or *Sindaco Unico*) a duty to monitor organizational adequacy and to escalate under Article 25-octies CCII where the specific conditions for an Article 17 CCII application exist — not whenever ordinary operational deterioration or a downsizing is under consideration. Engaging the *Collegio Sindacale* early in the diagnostic process remains a discipline this guide recommends as a matter of course.

3.3 Direzione e Coordinamento and Parent Exposure in a Partial-Scope Decision

Article 2497 c.c. imposes liability on a parent exercising *direzione e coordinamento* in a manner contrary to correct management principles:

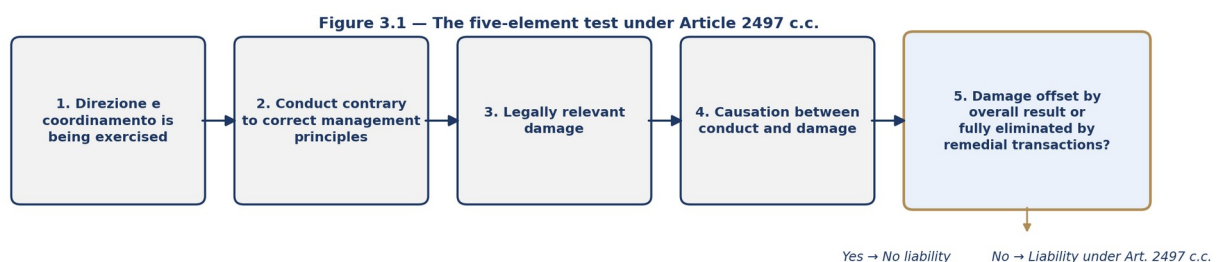


Figure 3.1 — The five-element test under Article 2497 c.c.

Shareholders may claim for prejudice to the profitability and value of their participation; creditors may claim for injury to the integrity of the subsidiary's assets. Element five is built into the statute itself — Article 2497 c.c. permits the *overall result* of the direction-and-coordination activity to be considered, and separately recognizes elimination of damage through specific remedial transactions.

 **“Compensating advantages” requires concrete evidence.** The prejudice must be assessed against the overall result of the direction-and-coordination activity and any specific compensating advantages that are **concrete, demonstrable, and causally connected** to the decision in question. Generic expectations arising from continued Group membership — “the entity benefits from being part of the Group” without more — are not sufficient. The resolution addressed in §3.1 should identify the specific, quantifiable benefits relied upon, not assert Group participation as self-evidently compensating.

Three further provisions matter for how §3.1's resolution should be drafted. **Article 2497-ter c.c.** requires decisions influenced by direction-and-coordination activity to be analytically reasoned, stating the specific interests whose evaluation influenced the decision. **Article 2497-bis c.c.** imposes disclosure and registration requirements identifying the controlling entity. **Article 2497-sexies c.c.** establishes a rebuttable presumption that direction and coordination is exercised by the entity required to consolidate the subsidiary's accounts, or that controls it.

3.4 Formal Appointment of an Independent Governance Lead

Where local management is asked to execute the downsizing it is itself substantially affected by, a structural conflict arises across every pillar this guide examines. One response — mechanics addressed here, strategic case developed in Chapter 7 — is appointment of an independent, professionally qualified *dottore commercialista* to lead or coordinate the process.

 **What the appointment does not do.** Statutory responsibility remains with the Italian directors; it is not transferred by a *procura*. A power of attorney confers representative authority for defined acts — it does not make the appointee a director, and does not relieve the board of decisions the law reserves to it. An appointment granting broad, undefined, autonomous authority — rather than a bounded mandate alongside a board that continues to decide matters reserved to it — risks the appointee being characterized as an *amministratore di fatto*.

The mandate should be documented with precision: a board resolution defining powers, duration, which decisions remain reserved to the board, and the relationship to the diagnostic and pillar-by-pillar work in Chapters 2 through 8. Where representative powers vis-à-vis third parties are granted, the grant must satisfy the written-form requirements in §3.7. A defect in the *procura* affects the act it purported to authorize, subject to possible ratification under Article 1399 c.c.; it does not automatically invalidate unrelated acts taken under separate authority.

3.5 Branch and Function Transfer Mechanics (Articles 2555–2560 c.c.)

Where the diagnostic in Chapter 2 classifies a coherent set of assets, contracts, and personnel as surviving-and-transferring, the operative instrument is frequently a *cessione di ramo d'azienda* under Articles 2555–2560 c.c. This section addresses corporate-governance mechanics; full tax treatment is addressed in Chapter 9, with Chapter 4A relevant principally where the transfer is intra-group and produces a transfer-pricing functional reallocation.

Article 2555 c.c. requires an organized complex of assets suitable, as such, to the exercise of business activity — not a disaggregated bundle. The Chapter 2 diagnostic establishes whether the surviving-and-transferring population meets that threshold.

Form. Article 2556 c.c., first paragraph, requires the transfer to be *proved in writing (forma scritta ad probationem)* — a matter of evidence, not validity, subject to whatever form the law requires for the individual assets involved. Article 2556 c.c., second paragraph, provides that such contracts, executed as a public deed or authenticated private deed, must be deposited for registration with the *Registro delle Imprese* within thirty days by the executing notary. Registration provides statutory publicity, but its effects should be assessed provision by provision rather than treated as a single universal opposability rule — Article 2559 c.c., for instance, attributes its own specific effects to registration with respect to transferred receivables.

Where the transfer agreement is signed on behalf of the parent or transferee under a power of attorney granted abroad, that *procura* generally requires legalization or apostille — under the Hague Apostille Convention where applicable, or consular legalization where not — **unless an applicable treaty or other exemption dispenses with the requirement**, and translation into Italian. Both the applicability of any exemption and the specific translation requirements should be confirmed directly with the receiving Italian notary before the transaction timeline is fixed, since practice can vary.

Employees. Article 2112 c.c. defines the transferred branch, for employment purposes, as a functionally autonomous articulation of an organized economic activity, identified as such at the time of transfer — leaving the parties room to define the perimeter, subject to judicial scrutiny of its genuineness. Within that perimeter, Article 2112 c.c. transfers affected employment relationships automatically, on existing terms. Article 2560 c.c.'s joint-liability rule for debts in the mandatory accounting records applies to the commercial business generally; employee liabilities follow the separate solidarity rule under Article 2112 c.c. itself.

Where more than fifteen employees are employed in the transferor's undertaking overall — not merely within the transferred branch — Article 47 of Law 428/1990 requires the prescribed prior information-and-consultation procedure with trade unions, applicable even where the transfer concerns only part of the business. This is a precondition to closing, addressed substantively in Chapter 5.

Tax exposure on the transferee. Article 14 of Legislative Decree 472/1997 makes the transferee jointly liable — subject to the benefit of prior exhaustion of the transferor and capped at the value of the transferred business — for tax and penalties attributable to violations *committed by the transferor* in the year of transfer and the two preceding years, including violations already contested in that period even if committed earlier. This liability is subject to the statutory certificate and due-diligence regime, and its ordinary temporal and quantitative limits cease to apply where the transfer is carried out fraudulently — presumed, absent contrary proof, where the transfer occurs within six months of a criminally relevant violation being contested against the transferor. This exposure — the transferee inheriting the transferor's prior liabilities, not the transferee's own subsequent conduct — is addressed further in Chapter 9.

3.6 Financing Agreements: Shareholder Loan Subordination and Covenant Triggers

Article 2467 c.c. subordinates repayment of shareholder loans to satisfaction of other creditors where the loan was granted either against an excessive imbalance between indebtedness and net equity, given the activity conducted, or in a financial situation where a capital contribution would reasonably have been more appropriate — two distinct statutory triggers, established independently of the mere fact that a downsizing is occurring.

 **Timing misconception.** Subordination under Article 2467 c.c. is not limited to formal insolvency proceedings. Established Cassazione case law confirms it operates as a temporary legal bar to repayment throughout the company's ordinary life, for as long as the qualifying financial condition persists — meaning a shareholder loan extended to fund a downsizing can already be unenforceable today, well before any insolvency filing, if the statutory conditions are met at the time repayment is sought.

(Specific case citations for this proposition should be confirmed against the complete published decisions before client-facing use.)

Article 2497-quinquies c.c. extends this subordination treatment to financing provided by the entity exercising *direzione e coordinamento* — directly relevant to this guide's foreign-controlled-group readership. Where the Italian subsidiary is

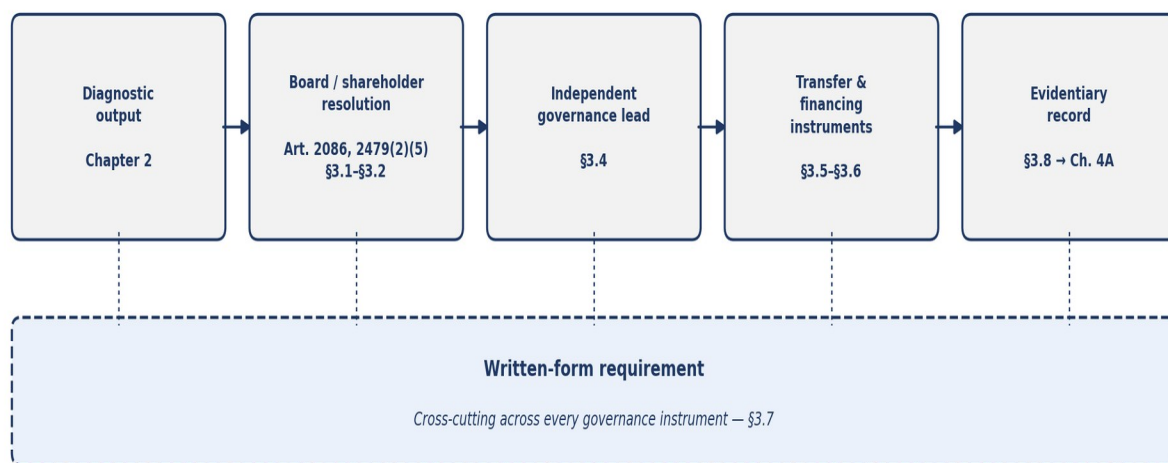
party to external financing, the downsizing should be checked against the facility's covenant package before the resolution is adopted; this review sits within the corporate-governance pillar because covenant compliance is itself an expression of the Article 2086 c.c. adequate-structure duty. For arm's-length interest pricing, Article 96 TUIR deductibility limits, and withholding-tax consequences, see Chapter 4B.

3.7 Written-Form Requirements Across All Downsizing Instruments

Italian law imposes written form across most downsizing instruments, but not uniformly: form for *validity*; form as *evidence* (Article 2556 c.c., para. 1); form for *filing or opposability* (Article 2556 c.c., para. 2; Article 2497-bis c.c.); corporate minute-book requirements; the form of a *procura* under Article 1392 c.c.; and the protected-venue requirements of Article 2113 c.c. for employee settlements, addressed in Chapter 5.

Informal communications are not, for that reason, legally irrelevant — an unminuted parent instruction can constitute powerful evidence of Article 2497 c.c. direction, of an undisclosed conflict, or of *amministratore di fatto* conduct. The discipline this chapter recommends is that the formal act, once decided, be memorialized through the properly empowered organ before implementation — not that informal communication carries no legal weight, since it plainly can, often against the party that generated it.

Figure 3.2 — The governance sequence



Closing the loop: the residual entity's post-downsizing governance is reassessed at §3.9

Figure 3.2 — The governance sequence, from the Chapter 2 diagnostic to the evidentiary record, with the written-form requirement as a cross-cutting discipline.

3.8 The Evidentiary Record

Each exposure examined in this chapter is tested, if tested at all, years after the downsizing was executed. What that authority reviews is the record.

✓ **What a defensible record must contain.** The diagnostic output from Chapter 2 as it stood when the decision was made; the business plan or projections relied on; alternatives considered and why partial reduction was preferred; external valuation or advisory opinions; cash-flow forecasts; the Article 2497-ter c.c. reasoning where applicable; and minutes reflecting deliberation, not merely conclusion. This record must be assembled contemporaneously — a record reconstructed after a dispute arises may carry materially less evidentiary weight and invite adverse inferences.

3.9 Governance of a “Residual” Italian Entity Post-Downsizing

Three points should be resolved before the downsizing is executed.

First, the residual scope should be checked against the corporate-object clause. Certain downsizings cross the threshold into an extraordinary transaction requiring notarial form and heightened shareholder approval. Where capital is impaired below statutory minimums, the applicable regime runs through Articles 2446–2447 c.c. (*s.p.a.*) or 2482-bis–2482-ter c.c. (*s.r.l.*), potentially requiring recapitalization, transformation, or dissolution under Article 2484 c.c.

The withdrawal-right analysis differs materially by entity type.

For the *s.p.a.*, Article 2437, para. 1(a), c.c. grants withdrawal rights only where a *formal resolution* amends the corporate-object clause, permitting a significant activity change. A mere *de facto* change without a formal amending resolution does not trigger this right.

For the *s.r.l.*, the position is broader and, per §3.1 above, arises earlier in the process than a withdrawal analysis alone suggests. **Where the downsizing itself constitutes an operation producing a substantial modification of the corporate object, Article 2479, para. 2, no. 5, c.c. mandatorily reserves the decision to the shareholders in the first instance — board authorization alone is not sufficient to adopt it.** Separately, Article 2473, para. 1, c.c. grants shareholders who did not consent to such an operation a withdrawal right, whether or not the by-laws' text is formally amended. An *s.r.l.* downsizing converting a manufacturer into a pure distribution or service-support unit can accordingly trigger two distinct consequences: a mandatory shareholder-decision requirement under Article 2479 c.c., and, for dissenting shareholders, a withdrawal claim under Article 2473 c.c.

 **Entity-type check required.** Confirm whether the entity is an *s.r.l.* or an *s.p.a.* before assessing this risk. The broader *s.r.l.* regime does not apply to an *s.p.a.*, and the narrower *s.p.a.* formal-amendment requirement does not protect an *s.r.l.*

Where this risk is present, it should be assessed and, where material, disclosed to affected minority shareholders before the resolution is adopted.

Second, board composition and reporting lines should be reassessed rather than left as legacy structure. **Third**, the residual entity's ongoing relationship with the parent should be reviewed so the post-downsizing operating model does not itself become the basis for a future Article 2497 c.c. claim.

Why This Matters to a Foreign Parent

Boards often assume a downsizing is a commercial decision followed by legal implementation. Italian law reverses that logic. Until the decision is translated into properly authorized corporate acts — including, where Article 2479(2)(5) c.c. applies, a shareholder decision rather than a board resolution alone — supported by a structure adequate under Article 2086 c.c. and a record capable of surviving later scrutiny, the restructuring remains commercially real but legally fragile. Chapter 4A now turns to the second co-equal pillar — tax law.

Appendix 3.A — Machine-Readable Reference Block

The following block maps the chapter's core statutory provisions into structured key-value pairs for downstream indexing and AI-assisted action planning. It is a reference aid, not a substitute for the prose above, and is not a source of authority in its own right.

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      "entity_type": "s.p.a.",
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    },
    {
      "article": "Art. 2086, para. 2, c.c.",
      "subject": "Duty of adequate organizational structure",
      "caution": "Not automatically triggered by every downsizing"
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    {
      "article": "Art. 2403 c.c. / Art. 25-octies CCII",
      "subject": "Collegio Sindacale monitoring and escalation duty",
      "trigger": "Conditions for an Art. 17 CCII application existing, not general downsizing"
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        "Conduct contrary to correct management principles",
        "Legally relevant damage",
        "Causation",
        "Absence of neutralization via overall result or specific remedial transactions"
      ],
      "protected_interests": {
        "shareholders": "Prejudice to profitability/value of participation",
        "creditors": "Injury to integrity of subsidiary's assets"
      },
      "compensating_advantages_standard": "Must be concrete, demonstrable, and causally connected to the specific decision - generic Group-membership benefits are insufficient",
      "related_articles": ["Art. 2497-ter c.c. (reasoned decisions)", "Art. 2497-bis c.c. (disclosure/registration)", "Art. 2497-sexies c.c. (rebuttable presumption)", "Art. 2497-quinquies c.c. (extends 2467 subordination to parent financing)"]
    },
    {
      "article": "Art. 2556 c.c.",
      "subject": "Branch transfer form",
      "para_1": "Written proof required (forma scritta ad probationem) - evidentiary, not validity requirement",
      "para_2": "Public deed / authenticated private deed required for Registro Imprese deposit within 30 days, by notary",
      "note": "Registration effects must be assessed provision by provision (e.g., Art. 2559 c.c. for receivables) - not treated as a universal opposability rule for the entire transfer"
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    {
      "article": "Art. 2112 c.c.",

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"subject": "Automatic transfer of employment relationships within genuine branch perimeter"
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{
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  "subject": "Union information-and-consultation procedure",
  "note": "Threshold is more than 15 employees in the transferor's undertaking overall, applicable even where only part of the business is transferred
- not the headcount within the transferred branch alone"
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{
  "article": "Art. 2560 c.c.",
  "subject": "Transferee joint liability for branch debts in mandatory accounting records (distinct from Art. 2112 c.c. employee solidarity)"
},
{
  "article": "Art. 14, D.Lgs. 472/1997",
  "subject": "Transferee tax liability on branch transfer",
  "note": "Transferee is jointly liable (subject to prior exhaustion of transferor, capped at business value) for the transferor's violations in the transfer
year plus two preceding years - not for the transferee's own subsequent default. Fraud exception removes caps if transfer occurs within 6 months of a
criminally relevant violation being contested against the transferor."
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    "Excessive imbalance between indebtedness and net equity given activity conducted",
    "Financial situation where equity contribution would have been reasonable"
  ],
  "timing_clarification": "Operates as standing bar during ordinary company life, not only in subsequent insolvency",
  "case_law_status": "Specific case citations require verification against complete published decisions before client-facing use",
  "extension": "Art. 2497-quinquies c.c. - extends to direzione e coordinamento financing"
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  "entity_type": "s.p.a.",
  "subject": "Withdrawal right",
  "trigger": "Formal resolution amending corporate-object clause permitting significant activity change",
  "caution": "De facto change without formal amendment does NOT trigger this right"
},
{
  "article": "Art. 2473, para. 1 c.c. / Art. 2479, para. 2, no. 5, c.c.",
  "entity_type": "s.r.l.",
  "subject": "Two distinct consequences",
  "note": "Art. 2479(2)(5) mandatorily reserves the decision to shareholders in the first instance where the operation substantially modifies the
corporate object; Art. 2473 separately grants dissenting shareholders a withdrawal right. These are sequential, not interchangeable."
},
{
  "article": "Arts. 2446-2447 c.c. (s.p.a.) / 2482-bis, 2482-ter c.c. (s.r.l.) / 2484 c.c.",
  "subject": "Capital impairment below statutory minimum - recapitalization, transformation, or dissolution"
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"cross_references": {
  "chapter_4a": "Tax/transfer-pricing consequences of functional change; branch-transfer tax treatment principally at Chapter 9",
  "chapter_5": "Labor consultation (Art. 47 L. 428/1990), Art. 2113 c.c. protected-venue settlement agreements",
  "chapter_6": "Director liability standard measured against Art. 2086 c.c. adequacy",
  "chapter_7": "Independent CRO strategic case (mandate mechanics only in Ch. 3, section 3.4)",
  "chapter_8": "Composizione Negoziata della Crisi",
  "chapter_9": "Branch-transfer full tax treatment; Art. 14 D.Lgs. 472/1997 transferee tax joint liability"
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"verification_status": "Statutory propositions checked against official statutory texts and secondary commentary as of 16 August 2026; cited case-law
propositions require confirmation against the complete published decision before final client-facing publication.",
"open_items_for_full_manuscript_pass": [
  "Confirm no other chapter cites old Chapter 3 numbering post-renumbering",
  "Confirm Chapter 9's reference to branch-transfer introduction points to section 3.5",
  "Confirm Chapter 1 ToC/Roadmap reflects current section 3.1-3.9 structure"
]
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```

Chapter 4A — Pillar II: Tax Law — Compensation and Transfer Pricing on Functional Change

4A.0 Introduction to the Chapter

Chapter 3 established that a downsizing has no legal effect until it is carried into corporate acts satisfying Italian formal requirements. This chapter addresses the second co-equal pillar: the transfer-pricing consequences that arise the moment those acts change the functional profile of the Italian entity relative to the rest of the Group. The premise governing this chapter is one frequently underestimated by a foreign CFO evaluating a downsizing purely as a cost-reduction exercise: a functional downgrade requires a contemporaneous Chapter IX compensation analysis regardless of whether any asset is formally sold, any contract is formally assigned, or any entity ceases to exist. Running that analysis and winning it are two different things, and this chapter is careful to keep them separate throughout: compensation is owed only where the restructuring, accurately delineated, involves the transfer of something of value — an asset, an intangible, an ongoing concern — or a termination or substantial renegotiation of an existing arrangement for which independent parties, in comparable circumstances, would have agreed compensation or indemnification. The OECD Guidelines are explicit that neither conclusion may be presumed: a reduction in expected profit alone does not entitle the Italian entity to be paid for it, and there is no presumption that every contract termination or substantial renegotiation carries a right to indemnification. What the diminution of function, risk, or asset base does — reliably, and without exception — is trigger the obligation to run the analysis; it does not, by itself, answer it.

This distinction matters because it is frequently missed. A downsizing that reduces the Italian entity's functional profile — converting a full manufacturer into a toll manufacturer, or a full-risk distributor into a limited-risk distributor or commissionaire — without any corresponding formal transfer of assets can still constitute a business restructuring within the meaning given to that term by the OECD, requiring both a contemporaneous compensation analysis and a revised transfer-pricing policy going forward — the first asking whether compensation is in fact owed under the test above, the second addressing the arm's-length remuneration for the reduced functional profile regardless of how the first is answered. The Chapter 2 diagnostic's classification of assets and liabilities as surviving-and-transferring, surviving-and-remaining, or terminating is the factual predicate for the analysis in this chapter; what this chapter adds is the recognition that the diagnostic must also capture functions and risks, not only assets, since it is the reallocation of functions and risks — assumed elsewhere in the Group following the downsizing — that principally drives the compensation analysis below.

One further point of scope bears stating plainly. This chapter does not take a position on why a Group initiates a functional downgrade. Tax efficiency is frequently among the reasons, and the analysis that follows applies with equal force whether the downsizing was initiated for operational, commercial, or tax reasons: the compensation and transfer-pricing obligations addressed here attach to what the Italian entity has given up, not to the motive behind the decision to take it. Where a restructuring's dominant purpose raises a question under the general anti-abuse principles of Article 10-*bis* of Law 212/2000, that is a distinct legal question outside the scope of this guide, which addresses the arm's-length pricing consequences of a functional change assumed to be commercially and legally valid.

4A.1 OECD Chapter IX as the Governing Framework for Any Functional Downgrade

Chapter IX of the OECD Transfer Pricing Guidelines governs the tax treatment of business restructurings, defined broadly as the cross-border redeployment of functions, assets, or risks between associated enterprises. Italy applies this framework directly through Article 110, paragraph 7, TUIR, and the Agenzia delle Entrate's guidance

has consistently followed the OECD approach rather than developing a materially divergent domestic doctrine — a point of genuine relief for the foreign parent, since it means the analysis a Group's global tax function is accustomed to applying elsewhere in Europe transfers into the Italian context without a separate conceptual framework.

The threshold question under Chapter IX is whether the downsizing constitutes a restructuring within its scope at all. Not every reduction does. A pure cost-cutting exercise that leaves the Italian entity's functions, assets, and risk allocation unchanged — headcount reduction within an unchanged functional profile, for instance — does not, by itself, trigger the Chapter IX analysis. What triggers it is a change in the entity's functional characterization: the surrender of functions previously performed locally, the transfer of assets (including intangibles) to another Group entity, or the reallocation of risks previously borne by the Italian entity to the parent or to another affiliate. The Chapter 2 diagnostic is again the operative tool here: where it classifies manufacturing know-how, customer relationships, or specialized workforce capability as terminating locally and reappearing — functionally, even where no formal transfer occurs — elsewhere in the Group, that reallocation is the fact pattern Chapter IX addresses.

4A.2 The Two-Part Framework: Compensation for the Restructuring and Post-Restructuring Pricing

Chapter IX analysis proceeds in two analytically distinct stages, and a common error — one this guide flags explicitly because it recurs in practice — is to address only the second and overlook the first. The first stage asks whether the restructuring itself, considered as a one-time event, warrants compensation to the Italian entity. The OECD governing test has two limbs, and only one need be satisfied: either the restructuring involves a transfer of something of value — an asset, an intangible, or an ongoing concern — to another Group entity, or it involves the termination or substantial renegotiation of an existing arrangement in circumstances where independent parties, taking account of their contractual rights, the assets involved, the profit potential at stake, and the options realistically available to them, would have agreed compensation or indemnification. Neither limb is satisfied merely because the Italian entity's expected future profits are lower after the restructuring than before; a reduction in profit potential is evidence relevant to valuing compensation once an entitlement is otherwise established, not an independent source of one. Where one of the two limbs is satisfied, the compensation obligation arises regardless of whether the downsizing is otherwise commercially justified at the Group level; a restructuring can be entirely sound business strategy for the Group and still require the Italian entity to be compensated for what it has given up. Where neither limb is satisfied, the correct conclusion — reached only after running the analysis, not assumed at the outset — is that no compensation is owed, and the inquiry proceeds directly to the second stage below.

The second stage addresses the ongoing transfer-pricing policy applicable to the Italian entity's reduced functional profile going forward — the arm's-length remuneration appropriate to a toll manufacturer, a limited-risk distributor, or a commissionaire, as distinct from the remuneration previously appropriate to the fuller functional profile the entity held before the downsizing. These two stages require separate analyses, separate documentation, and, in Italy, separate defensibility before the Agenzia delle Entrate; conflating them — treating a revised go-forward transfer-pricing policy as if it also discharged the compensation obligation for the restructuring event itself — is among the more common and more costly errors this guide has observed in practice.

4A.3 Functional Profile Spectrums, FAR Analysis, and Compensable Steps

Both manufacturing and distribution functions exist along a spectrum running from a fully entrepreneurial profile — bearing market risk, inventory risk, and typically owning the relevant intangibles — to a stripped, low-risk profile compensated on a routine, cost-plus or limited-margin basis. Locating the Italian entity's position on that spectrum, both before and after the downsizing, is the function of the Functions, Assets, and Risks (FAR) analysis that underlies every stage of the compensation and post-restructuring pricing framework addressed in §4A.2. The FAR analysis is not a separate exercise conducted alongside the Chapter 2 diagnostic; it is the diagnostic read for tax purposes, translating the classification of assets, liabilities, and functions performed in Chapter 2 into the specific functions performed, assets employed, and risks assumed and borne — the vocabulary the Agenzia delle Entrate and any foreign counterpart authority will expect the analysis to use.

A downsizing frequently moves the Italian entity down this spectrum in operational terms before it is ever expressed in transfer-pricing terms, and the operational questions are what determine the tax answer, not the reverse. Where production of a given line relocates — to another Group manufacturing site, whether in the EU or beyond — the FAR analysis must trace, function by function: who purchases raw materials and bears the associated price and supply risk; who owns work-in-progress and finished-goods inventory and bears the associated obsolescence and carrying risk; who invoices the end customer and bears credit and collection risk; who negotiates and manages the supplier relationships previously managed locally; who performs quality control and bears the associated product-liability and warranty risk; and who retains the engineering and process-design capability that supported the discontinued production. Each of these is a discrete functional and risk element that may migrate independently of the others, and a downsizing frequently does not move them as a single block — quality control and warranty risk, for instance, sometimes remain with the Italian entity as a residual service function even where manufacturing itself relocates, a configuration that produces its own transfer-pricing remuneration question distinct from the compensation analysis addressed below.

A full manufacturer converting to a contract or toll manufacturer retains physical production but surrenders the entrepreneurial risk, and correspondingly the profit potential, previously associated with the fuller profile; a full-risk distributor converting to a limited-risk distributor or commissionaire retains the customer-facing activity but surrenders inventory risk, credit risk, and market risk to the principal elsewhere in the Group. Each step down this spectrum should be independently tested against the two-limb standard of §4A.2, since each may surrender a distinct component of value — but the testing, not the stepping, is what establishes compensability; a step that surrenders no identifiable asset, intangible, or ongoing concern, and that does not terminate or substantially renegotiate an arrangement for which independent parties would have required indemnification, does not become compensable merely because it sits within a broader sequence of steps that includes others that do. Where the Chapter 2 diagnostic identifies a downsizing that moves the Italian entity down this spectrum in stages rather than in a single restructuring, each stage should be independently assessed on its own facts rather than assuming either that only the final configuration matters or that every intermediate step is automatically compensable; the Agenzia delle Entrate has, consistent with OECD guidance, scrutinized staged restructurings precisely because staging is sometimes used, whether deliberately or not, to obscure the cumulative value surrendered across steps that are each, individually, genuinely compensable.

4A.4 The Options Realistically Available Test and Contemporaneous Documentation

The OECD's Options Realistically Available (ORA) standard — asking whether an independent party in the position of the Italian entity would have accepted the restructuring on the terms proposed, given the realistic commercial alternatives available to it — is best understood not as a standalone valuation rule but as the

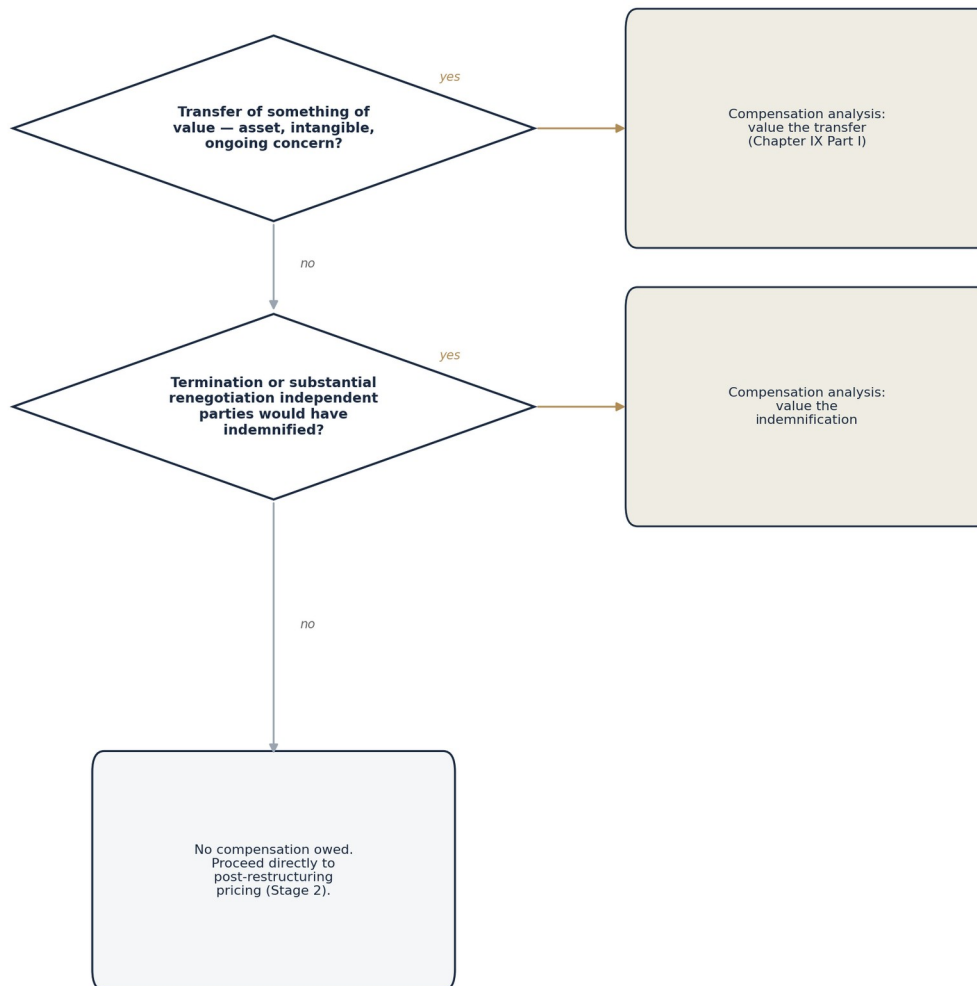
analytical lens through which the two-limb test of §4A.2 is applied: ORA helps accurately delineate what the restructuring actually is, assess whether an independent party would have entered into it at all, evaluate the relative bargaining positions of the parties, and test whether the terms finally agreed satisfy the arm's-length standard. The existence and amount of compensation still turn on what §4A.2 requires — a transfer of something of value, or a termination or substantial renegotiation warranting indemnification — together with the relevant contractual and commercial rights, the parties' indemnification expectations, and an appropriate valuation method; ORA informs each of these but does not substitute for any of them. The test requires the analysis to be conducted from the perspective of the restructured entity, not from the perspective of the Group as a whole; a restructuring that is efficient for the Group is not, for that reason alone, one an independent Italian entity would have accepted without compensation. One qualification bears stating explicitly: continuation of the pre-existing arrangement counts as a realistically available option only where the Italian entity had some contractual or commercial basis for expecting it to continue — a subsidiary cannot claim, as its baseline for comparison, a right to preserve an intra-group mandate that it never held in the first place; where no such basis exists, the comparison is between the restructuring as proposed and the entity's other genuinely available alternatives, not against an assumed entitlement to the status quo.

The ORA test is document-intensive by design, and this is the point at which the corporate-governance record addressed in Chapter 3, §3.8 becomes directly relevant to the tax pillar: the same board papers, business plans, and documented consideration of alternatives that establish Article 2086 c.c. adequacy also constitute the contemporaneous evidence the ORA analysis requires. A transfer-pricing study prepared after the fact, reconstructing what alternatives the Italian entity might theoretically have considered, is materially weaker evidence before the Agenzia delle Entrate than a study drawing on the board's actual contemporaneous deliberation. Coordinating the timing of the transfer-pricing documentation with the governance record — so that the two are prepared from the same underlying factual record rather than independently reconstructed by separate advisors months apart — is accordingly one of the more consequential sequencing decisions in the downsizing process.

KEY DISTINCTION *A reduction in expected future profit is not an independent third gate. OECD TPG para. 9.78 rejects any presumption that termination or renegotiation automatically carries indemnification; para. 9.39's profit-potential discussion is a valuation concept, engaged only once one of the two boxes in the diagram below is already answered "yes." Keep "compensation analysis required" and "compensation payable" as separate conclusions throughout.*

The Governing Compensation Test

§4A.2 / §4A.4 — neither box is satisfied by a mere reduction in expected profit alone



The Governing Compensation Test — §4A.2/§4A.4 — neither box is satisfied by a mere reduction in expected profit alone

MACHINE-READABLE INDEX — §4A.2 / 4A.4

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{
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  "concept": "Chapter IX compensation entitlement test",
  "trigger": "Any functional downgrade identified by the Chapter 2 diagnostic",
  "decision_test": "Two-limb OECD test: (a) transfer of something of value (asset, intangible, ongoing concern), OR (b) termination/substantial renegotiation an independent party would have indemnified. A reduction in expected profit alone satisfies neither limb.",
  "required_data": [
    "FAR analysis before/after",
    "board papers and business plans (Ch.3 §3.8 governance record)",
    "contractual rights under the pre-existing arrangement"
  ],
  "responsible_owner": "Group transfer pricing function, coordinated with the CRO",
  "deadline": "Contemporaneous with the restructuring; ORA evidence prepared after the fact is materially weaker",
  "required_evidence": "Contemporaneous ORA documentation drawing on the same factual record as the Ch.3 governance file",
  "applicable_authority": "OECD TPG Chapter IX (2022), paras 9.39 and 9.78; Art. 110(7) TUIR",
  "outcome_if_yes": "Compensation analysis proceeds to quantification (MPEEM / RFR / cost method)",
  "outcome_if_no": "No compensation owed; proceed directly to post-restructuring transfer-pricing policy",
  "reverification_date": "At each staged step of a multi-stage restructuring"
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4A.5 Exit Taxation: A Narrower and More Frequently Misapplied Rule Than It Appears

A foreign CFO's instinct on hearing "exit tax" is usually correct in one respect and wrong in another. The instinct that a downsizing which moves functions, assets, or risk to a foreign Group entity might trigger exit taxation is not unreasonable — Italy, like every OECD jurisdiction, does tax the departure of taxable substance from its jurisdiction. The error is in how broadly that trigger is assumed to reach. Article 166 TUIR is not a general rule taxing any reallocation of assets, functions, or risk to a foreign affiliate; it is a narrower rule keyed to specific events causing Italy to lose its taxing rights over the taxpayer or over a defined slice of its activity. An ordinary disposal or intercompany transfer by an Italian resident company that remains Italian resident, and remains subject to ordinary Italian corporate taxation on its (reduced) activity, does not fall within Article 166 merely because the counterparty is abroad; it falls instead under the ordinary business-income and arm's-length rules — Articles 9, 86, and 110, paragraph 7, TUIR — which is precisely the Chapter IX compensation and transfer-pricing framework already addressed in §§4A.1 through 4A.4. Article 166-bis compounds the confusion where it is invoked loosely: it is not a second exit-tax provision but the entry-tax counterpart, governing the tax basis of assets that arrive in Italian jurisdiction, and has no bearing on a downsizing that moves assets or functions out of Italy.

The practical consequence is that Article 166 is engaged far less often in an ordinary downsizing than its name suggests, and a CFO who treats every functional reallocation as a potential exit-tax event will misdirect analytical effort toward a provision that, on the great majority of downsizing fact patterns, simply does not apply — while the Chapter IX compensation analysis that *does* apply gets less attention than it deserves. The following sequence should be worked through, in order, for any downsizing that moves assets, functions, or risk abroad:

1. **Does the Italian company remain an Italian tax resident?** If yes, proceed to question 2. If the restructuring involves an actual transfer of the company's fiscal residence abroad, Article 166, paragraph 1, is engaged directly: the transfer constitutes a realization event at market value for the assets and the business or business complex that do not remain connected to an Italian permanent establishment.
2. **Is the transfer a genuine transaction between separate legal entities — the Italian company and a foreign Group affiliate — with the Italian company continuing to exist and to be taxed in Italy on its residual activity?** If yes, this is the ordinary case for a downsizing (as distinct from a full exit), and Article 166 is not the governing provision; proceed to question 5.
3. **Does the restructuring involve an Italian or foreign permanent establishment specifically** — for instance, a foreign entity transferring the whole of an Italian PE to its head office or to another PE abroad, or an Italian company transferring assets out of a foreign PE's connection back into an Italian one? These are the PE-specific triggers Article 166 addresses in addition to the residence-transfer case in question 1.
4. **Does a merger, demerger, or contribution effect the removal of assets from Italian taxing jurisdiction** as part of a cross-border reorganization, rather than an ordinary intercompany sale or functional reallocation? Certain extraordinary transactions of this kind fall within Article 166's scope even without a formal residence transfer.
5. **Where none of questions 1, 3, or 4 is answered yes, Article 166 does not apply**, and the ordinary realization and transfer-pricing rules addressed in §§4A.1–4A.4 govern the transaction in full; no separate exit-tax analysis is required, and none should be represented to the Group as outstanding.
6. **Where Article 166 does apply** — a residence transfer, a PE-specific event, or a qualifying extraordinary transaction — the exit gain is computed as the market value of the assets or business complex leaving

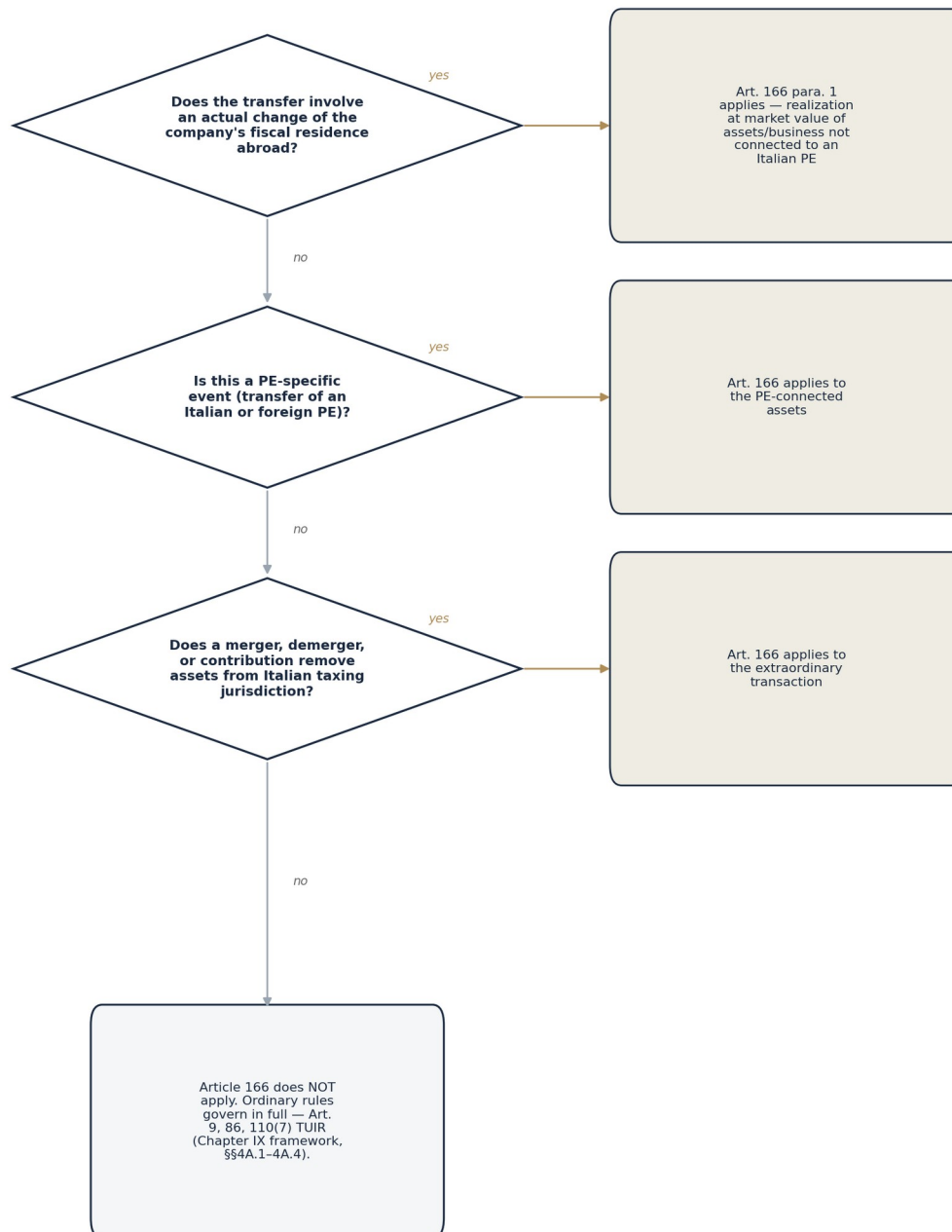
Italian taxing jurisdiction, less their tax basis, and Article 166, paragraph 9, TUIR permits eligible taxpayers transferring to another EU or EEA state to elect payment in five equal annual instalments rather than in full at closing; that election must be made in the relevant tax return and is not available retroactively.

Two further points matter once the sequence above has correctly identified whether Article 166 applies at all. First, where it does apply, the exit-tax valuation and the Chapter IX compensation valuation addressed in §4A.2 rest on distinct legal bases and are not required to match, though a material, unexplained divergence between them is a natural point of inquiry for the Agenzia delle Entrate and should be anticipated in the documentation rather than left for an examiner to raise. Second, and more commonly relevant to a downsizing that leaves the Italian entity in place and Italian-resident, the *absence* of an Article 166 exposure does not mean the restructuring is untaxed — it means the applicable tax consequences are those of §§4A.1 through 4A.4: the ordinary realization of value under Articles 9 and 86 TUIR, tested and priced under the arm's-length principle of Article 110, paragraph 7. Confirming which of the two regimes actually governs, before the restructuring is executed, is accordingly one of the more consequential threshold determinations in this chapter — not a formality to be resolved after the fact.

SCOPE CORRECTION Article 166 is not a general rule for "assets or functions leaving Italian taxing jurisdiction." It is keyed to loss of Italian residence, PE-specific events, and defined extraordinary transactions. An ordinary intercompany functional transfer by a company that stays Italian-resident falls under Articles 9, 86, and 110(7) — not Article 166. The deferral mechanism is paragraph 9 (5 instalments), not the superseded paragraph 2-quater.

Article 166 TUIR — Does Exit Tax Apply?

§4A.5 — an ordinary intercompany transfer, with the Italian company remaining Italian-resident, falls through to "no"



Article 166 TUIR — Does Exit Tax Apply? — §4A.5 decision sequence

MACHINE-READABLE INDEX — §4A.5

```

{
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  "concept": "Article 166 TUIR exit tax applicability",
  "trigger": "Downsizing moves assets, functions, or risk to a foreign Group entity",
  "decision_test": "Sequential: (1) does Italian company remain Italian-resident; (2) is this an ordinary intercompany transaction with the Italian company continuing to exist and be taxed in Italy; (3) PE-specific event; (4) qualifying extraordinary transaction (merger/demerger/contribution)",
  "required_data": [
    "Residence status post-restructuring",
    "legal form of the transaction",
    "PE structure if any",
  ]
}
  
```

```

"market value of assets/business complex if Art.166 is engaged"
],
"responsible_owner": "Group tax function with Italian counsel",
"deadline": "Before restructuring execution; instalment election made in the relevant tax return, not retroactively available",
"required_evidence": "Valuation methodology documentation; interpello ruling request where valuation is uncertain",
"applicable_authority": "Art. 166 TUIR (post-ATAD, D.Lgs. 142/2018); Art. 166 para. 9 (5-instalment election, EU/EEA); Art. 9, 86, 110(7) TUIR (default regime where Art.166 does not apply)",
"outcome_if_yes": "Market-value exit gain computed; 5-instalment election available for EU/EEA destinations under para. 9",
"outcome_if_no": "Ordinary realization and transfer-pricing rules govern in full — no separate exit-tax filing required",
"reverification_date": "Not applicable — one-time determination at restructuring"
}

```

4A.6 Valuing and Transferring the Customer List

Where the Chapter 2 diagnostic classifies the customer relationship — the commercial and customer-relationship intangible identified in Chapter 2, §2.4 — as terminating locally and reallocated to another Group entity, its valuation is among the more consequential and more frequently under-documented components of the compensation analysis. The Multi-Period Excess Earnings Method, applied consistently with the valuation methodology introduced in Chapter 2, is generally the most defensible approach where the customer relationships in question generate an identifiable, forecastable earnings stream attributable specifically to the relationship rather than to the product or the brand; the relief-from-royalty method is not generally the natural alternative for a customer relationship — a genuinely licensable right and reliable comparable royalty evidence for customer intangibles specifically are both uncommon in practice — and should be retained as the valuation method only where those two conditions are actually met, rather than reached for by default whenever MPEEM's earnings-stream data proves difficult to assemble. Where the reallocation involves not only the customer relationship but an identifiable customer database, the two should not be treated as legally identical assets: a database transfer raises its own data-protection and cross-border transfer analysis under the GDPR and Italian implementing law, distinct from and additional to the tax valuation addressed here.

Valuation, however, is only half of what a customer-list reallocation requires the CFO to assess; the mechanism by which the relationship migrates carries its own, distinct set of tax and regulatory consequences that a valuation exercise alone does not capture. Four migration patterns recur in practice, and each produces a different profile. Where the Italian entity retains the customer relationship but begins invoicing on behalf of, or under instruction from, a foreign principal, a shared or transitional arrangement of this kind carries meaningful permanent-establishment risk in Italy — addressed further in Chapter 4B — since the Italian entity's continued customer-facing activity can itself constitute a dependent-agent PE for the foreign principal if the Italian entity habitually concludes contracts, or negotiates their material terms, on the principal's behalf. Where the relationship transfers outright to a newly appointed independent distributor in another jurisdiction, the compensation analysis in this section applies most directly, and the transfer should be treated, and valued, as a discrete disposal. Where the Italian entity's role converts to direct sales by the foreign parent into the Italian market, the customer relationship formally terminates locally, but the diagnostic in Chapter 2 should confirm whether residual local activity — order support, technical service, warranty administration — survives in a form that itself requires separate remuneration going forward rather than being treated as fully terminated. Where the Italian entity is retained as commissionaire or agent for the same customers it formerly served as principal, the customer relationship is not transferred in the ordinary sense at all, but the shift from principal to agent status is itself the compensable functional change addressed in §4A.3, and should not be treated as tax-neutral merely because the same personnel continue to service the same accounts.

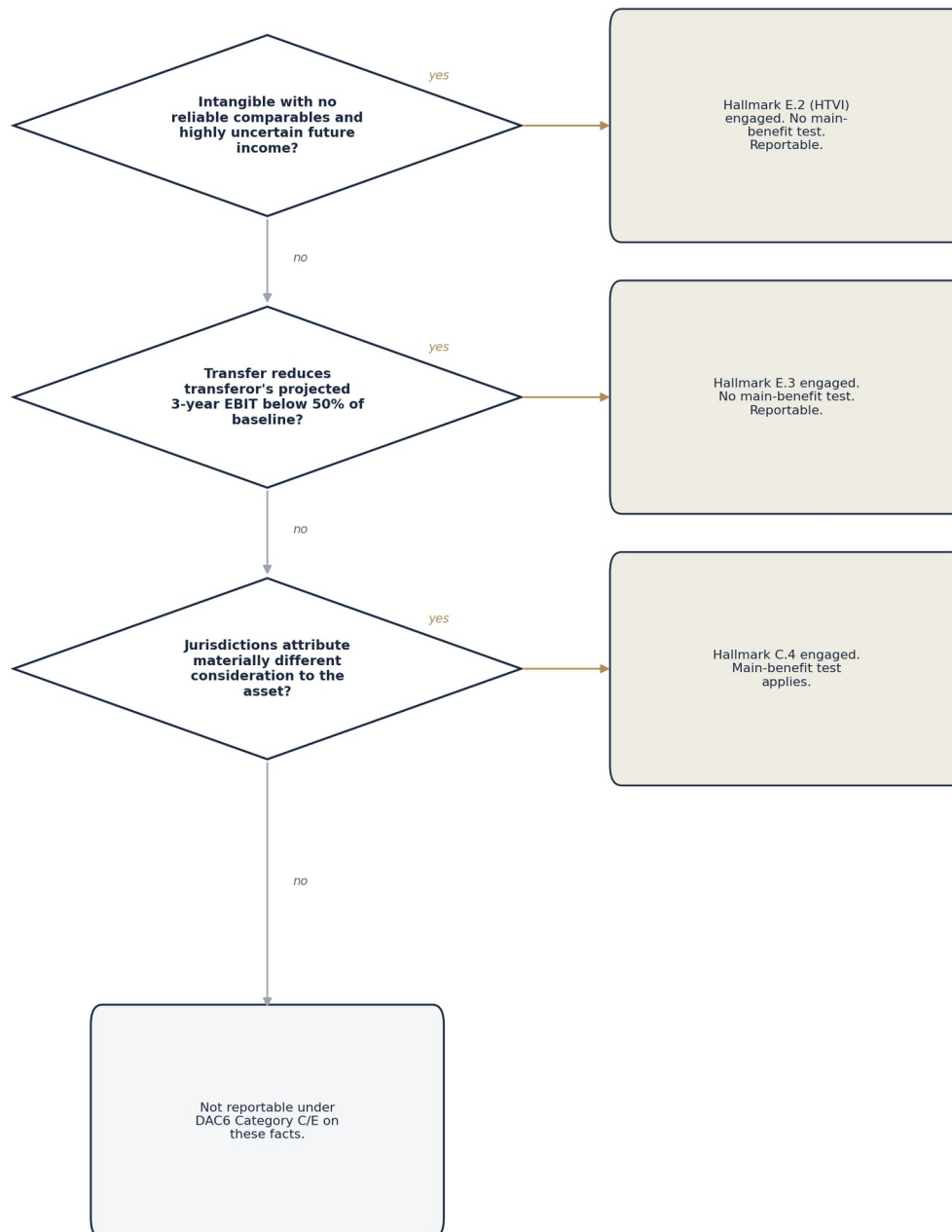
Two further considerations bear directly on a foreign-HQ downsizing, and the first requires more precision than a passing reference to "DAC6 hallmarks" usually receives, since the three transfer-pricing-specific hallmarks in Annex IV, Category E, address materially different fact patterns and are frequently confused with one another in

practice. **Hallmark E.2** — not C.4 — is the hard-to-value-intangible hallmark, engaged where the intangible transferred has no reliable comparables and its future income or the assumptions underlying its valuation are highly uncertain at the time of the transfer; a customer-relationship intangible valued under MPEEM on a forecastable, comparable-supported earnings stream will frequently *not* meet this standard, precisely because a defensible MPEEM valuation depends on the earnings stream being reasonably predictable. **Hallmark E.3** is the functional-restructuring hallmark most likely to be engaged by the customer-list reallocation this section addresses: it applies where an intra-group cross-border transfer of functions, risks, or assets reduces the transferor's projected annual EBIT, over the three years following the transfer, to less than 50 percent of what its projected annual EBIT would have been absent the transfer. **Hallmark C.4**, distinct from both, applies where the consideration treated as payable for a transferred asset differs materially between the jurisdictions involved — a mismatch most likely to arise where the Italian and the receiving jurisdiction's transfer- pricing positions on the same reallocation diverge, the scenario addressed at §4A.9 below — and should be tested separately from E.2 and E.3 rather than assumed to travel with them. None of the three hallmarks is automatically engaged merely because a customer relationship is relocated; each requires its own factual test, and reporting is not triggered until the applicable test, including the main-benefit test where the hallmark carries one, is actually satisfied. Where a hallmark is engaged, the 30-day reporting clock and the identity of the reporting intermediary or, in its absence, the taxpayer, should be confirmed before the transfer is executed, since the relevant deadlines run from specific triggering events in the transaction timeline rather than from the transaction's completion. Second, the jurisdiction receiving the customer relationship will frequently seek a step-up in the intangible's tax basis to reflect the compensation paid, and the foreign parent's own tax function should coordinate the Italian-side compensation analysis with the receiving jurisdiction's basis position before either is finalized; the mechanism for resolving an inconsistency between the two once identified by either tax authority is addressed in §4A.9 below.

HALLMARK MAPPING E.2 = hard-to-value intangible. E.3 = >50% projected 3-year EBIT reduction. C.4 = cross-border valuation mismatch between jurisdictions. Source: Annex IV, Directive (EU) 2018/822. None is automatic merely because a customer relationship relocates — each requires its own factual test.

DAC6 Hallmark Triage for Cross-Border Transfers

§4A.6 — E.2, E.3, and C.4 are independent tests; none is automatic merely because a customer relationship relocates



DAC6 Hallmark Triage — §4A.6 — E.2, E.3, C.4 are independent tests

MACHINE-READABLE INDEX — §4A.6

```

{
  "section": "4A.6",
  "concept": "DAC6 hallmark classification for cross-border intangible/customer-list transfers",
  "trigger": "Customer relationship or other intangible reallocated to a foreign Group entity",
  "decision_test": "Three independent tests: E.2 (no reliable comparables + highly uncertain future income), E.3 (>50% projected 3-year EBIT reduction vs. no-transfer baseline), C.4 (material cross-jurisdiction valuation mismatch)",
  "required_data": [
    "Valuation methodology and comparables analysis",
    "3-year EBIT projections with/without the transfer",
    "receiving jurisdiction's basis position"
  ]
}
  
```

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1,
"responsible_owner": "Group tax / reporting intermediary (or taxpayer, absent an intermediary)",
"deadline": "30 days from the relevant triggering event in the transaction timeline",
"required_evidence": "Hallmark-specific test documentation; main-benefit test analysis where applicable (C.4 only)",
"applicable_authority": "Annex IV, Category E and C, Council Directive (EU) 2018/822 (DAC6)",
"outcome_if_yes": "Reportable cross-border arrangement; 30-day filing clock runs",
"outcome_if_no": "Not reportable under the tested hallmark; reassess if facts change",
"reverification_date": "At each material change to the transferred intangible's valuation basis"
}

```

4A.7 DEMPE Functions and Manufacturing Know-How

The customer-relationship analysis in §4A.6 addresses one category of intangible; a manufacturing downsizing frequently puts a second, equally significant category in play — process know-how, technical documentation, quality systems, and production methods — and the OECD's DEMPE framework, rather than legal ownership, governs how the returns associated with these intangibles are allocated among Group entities. DEMPE — Development, Enhancement, Maintenance, Protection, and Exploitation — asks which Group entities actually perform the functions that create and sustain an intangible's value, not which entity holds legal title to it; an entity that merely holds registered rights to manufacturing know-how without having performed the DEMPE functions that generated it is not, under OECD guidance, automatically entitled to the associated return.

This matters directly to a downsizing because the Chapter 2 diagnostic's classification of manufacturing know-how as an intangible asset — whether surviving-and-transferring, surviving-and-remaining, or terminating — is only the starting point; the DEMPE analysis determines who is compensated for it. Where the Italian entity's engineers, production supervisors, and quality personnel have historically performed development and enhancement functions with respect to process know-how used across the wider Group — refining a manufacturing process originally designed elsewhere, for instance — the Italian entity may be entitled to arm's-length remuneration reflecting the nature and value of its DEMPE contributions, even where legal ownership of the underlying know-how sits with the parent or with another Group entity, and even where the downsizing formally terminates the Italian entity's manufacturing activity. That entitlement is not automatic ownership of, or a residual claim to, the intangible's full return: DEMPE performance is one input into an analysis that must also weigh which Group entity controls the economically significant risks associated with the intangible, which entity has the financial capacity to assume those risks, and whether the Italian entity's contribution was routine or unique and valuable — together with the arm's-length remuneration the Italian entity has already received, through its historical intercompany pricing, for those same contributions. Where the Italian entity has performed only routine production functions without material development, enhancement, or protection activity, its DEMPE contribution — and correspondingly its remuneration claim on any reallocation of the underlying know-how — is limited notwithstanding the apparent scale of the manufacturing operation being discontinued.

The practical implication for this chapter's compensation framework is that the diagnostic exercise, when applied to manufacturing know-how, should not stop at identifying the intangible; it should identify which specific DEMPE functions the Italian entity has historically performed with respect to it, since this determines both whether a compensation claim exists under §4A.2 and its approximate magnitude. This assessment draws on the same personnel records, R&D documentation, and process-development history that inform the specialized-workforce-capability classification in Chapter 2, and should be conducted jointly with that classification rather than as a separate downstream exercise. The output of that assessment is a remuneration claim calibrated to the value and character of the Italian entity's demonstrated contribution, not an entitlement to be negotiated upward on the assumption that DEMPE performance alone secures a share of the intangible's residual profit.

KEY DISTINCTION *Performing DEMPE functions supports a claim to arm's-length remuneration reflecting the nature and value of the contribution — it is not automatic ownership of, or a residual claim to, the intangible's full return. Risk control, financial capacity to bear risk, and whether the contribution was routine or unique/valuable all bear on the analysis alongside DEMPE performance itself.*

MACHINE-READABLE INDEX — §4A.7

```
{
  "section": "4A.7",
  "concept": "DEMPE-based remuneration entitlement for manufacturing know-how",
  "trigger": "Manufacturing downsizing involving process know-how, technical documentation, or quality systems",
  "decision_test": "Which Group entity performed Development, Enhancement, Maintenance, Protection, Exploitation functions; who controls the associated economically significant risks; who has financial capacity to bear them; is the contribution routine or unique/valuable; what remuneration was already received historically",
  "required_data": [
    "Personnel and R&D records",
    "process-development history",
    "historical intercompany pricing for the same contributions"
  ],
  "responsible_owner": "Group transfer pricing function, jointly with Ch.2 diagnostic team",
  "deadline": "Contemporaneous with the Chapter 2 asset classification",
  "required_evidence": "DEMPE functional analysis distinct from legal-title documentation",
  "applicable_authority": "OECD TPG Chapter VI (intangibles) and Chapter IX",
  "outcome_if_yes": "Arm's-length remuneration claim calibrated to contribution value — not automatic ownership or residual-profit entitlement",
  "outcome_if_no": "Limited or no DEMPE-based claim regardless of the manufacturing operation's scale",
  "reverification_date": "Not applicable — one-time determination at restructuring"
}
```

4A.8 Advance Pricing Agreements and the Mutual Agreement Procedure

Not every downsizing warrants the time and cost of an Advance Pricing Agreement; for a restructuring of modest scale, robust contemporaneous documentation under §4A.4 is generally sufficient. Where the restructuring is large relative to the Italian entity's scale, involves a jurisdiction with an active and predictable APA program, or is expected to establish a transfer-pricing policy the Group intends to apply consistently over an extended period, a bilateral or multilateral APA — negotiated between the Agenzia delle Entrate and the competent authority of the receiving jurisdiction, most commonly relevant for this guide's readership where the counterparty is Germany, France, the United States, or Japan — should be evaluated as an alternative to unilateral documentation. An APA does not eliminate the compensation analysis addressed in §4A.2; it provides advance certainty over the go-forward pricing policy addressed in that section's second stage, and in some programs can be negotiated to cover the restructuring transaction itself.

Where a restructuring proceeds without an APA and is subsequently challenged by either the Italian or the foreign tax authority, the Mutual Agreement Procedure under the applicable bilateral tax treaty, or under the EU Arbitration Convention where both jurisdictions are EU member states, remains available to resolve resulting double taxation. A foreign parent should treat the MAP route as a contingency to be preserved rather than assumed away: preserving MAP access generally requires that the taxpayer file for it within the treaty's stipulated time limit following notification of the adjustment giving rise to double taxation, a deadline that is straightforward to miss where the adjustment is identified by finance or tax personnel unfamiliar with the procedural requirement.

4A.9 Comparative Note and Cross-Border Consistency

Where a Group's downsizing redeploys the same function to another EU jurisdiction rather than eliminating it, the receiving jurisdiction will generally apply an equivalent standard to the one addressed in §4A.4, since the Options Realistically Available test derives from the OECD Guidelines rather than from Italian domestic law specifically and has been incorporated, with varying degrees of formal codification, across EU member states' transfer-pricing frameworks. The practical implication for the foreign parent is that documenting the

compensation analysis once, to a standard defensible in Italy, substantially reduces the incremental documentation burden of defending the same restructuring before the receiving jurisdiction's tax authority — provided the analysis is prepared with that dual audience in mind from the outset rather than retrofitted afterward.

Where the Italian-side compensation figure and the receiving jurisdiction's basis position, addressed in §4A.6, are subsequently found to be inconsistent by either tax authority — whether through a routine audit or through the ordinary exchange-of-information channels operating between EU member states' tax administrations — the primary domestic mechanism for relief is the corresponding-adjustment procedure under Article 31-*quater* of Presidential Decree 600/1973, which allows the Agenzia delle Entrate to grant a corresponding downward adjustment in Italy where a foreign tax authority has made an upward transfer-pricing adjustment consistent with the arm's-length principle, subject to the conditions and procedure set out in that provision; where relief is not available domestically, the MAP route addressed in §4A.8 remains the applicable channel. Readers should note that the specific EU directive governing exchange of information for a given category of cross-border data varies by data type — Pillar Two GloBE information returns, for instance, are exchanged under a distinct instrument from general transfer-pricing adjustment information — and the applicable instrument should be confirmed for the specific information at issue rather than assumed, since misidentifying the governing exchange mechanism can lead to incorrect assumptions about reporting timing and counterparty visibility.

Why This Matters to a Foreign Parent

A downsizing that reduces headcount and cost without formally transferring any asset requires exactly the same Chapter IX analysis as one that does — the presence or absence of a conveyance document is not what determines whether compensation is owed. What determines it is whether the two-limb test of §4A.2 is satisfied: a transfer of something of value, or a termination or substantial renegotiation independent parties would have indemnified. A CFO who evaluates the downsizing's cost savings without separately running that analysis — and without separately checking whether Article 166 is actually engaged under the narrower test of §4A.5, and whether the DEMPE contribution addressed at §4A.7 supports a remuneration claim — has priced only one side of the transaction; a CFO who assumes compensation is owed without running the analysis has potentially overstated the other side of it. Both errors are costly, and this chapter's central discipline is to keep "compensation analysis required" and "compensation payable" as two separate conclusions throughout, reached in that order. The governance record built in Chapter 3 is not incidental to this analysis — where compensation is in fact owed, it is frequently the primary evidence on which the quantum is defended. Chapter 4B now turns to the tax exposures that persist after the downsizing is executed: permanent-establishment risk in the reduced Italian operation, GloBE and Pillar Two consequences, and the compliance obligations that survive even where the underlying function does not.

4A.10 What the Compensation and Transfer-Pricing Record Must Show

The sections above establish the compensation and exit-tax analysis a functional downgrade requires. What follows draws that analysis together into the evidentiary terms in which it will actually be tested.

What the compensation and transfer-pricing record must show. First, that the options realistically available (ORA) analysis addressed at §4A.4 was performed contemporaneously with the functional change, not reconstructed once the Agenzia delle Entrate or a foreign tax authority opened an inquiry — a reconstructed ORA analysis is materially weaker evidence of the arm's-length outcome than one prepared before the restructuring was implemented. Second, that the functional, asset, and risk reallocation addressed at §4A.3, the DEMPE contribution addressed at §4A.7, and the customer-list valuation addressed at §4A.6 were each

documented on a basis consistent with the diagnostic classification of Chapter 2, so that the transfer-pricing position and the underlying operational reality it purports to describe do not diverge under later scrutiny. Third, that the compensation methodology and any exit-tax position taken under §4A.5 were assessed against the OECD Chapter IX framework addressed at §4A.1 at the time of the restructuring, with any subsequent APA or MAP engagement under §4A.8 treated as confirming — rather than substituting for — a position already taken on a reasoned basis.

A transfer-pricing file assembled on this basis is the primary defense against the functional-change compensation and exit-tax exposure this chapter addresses, for the same reason the governance record of Chapter 3 is the primary defense against Article 2497 c.c. exposure: both are tested, if tested at all, years after the fact, by a reviewer working only from what was written down at the time.

Chapter 4B — Pillar II: Tax Law — Post-Downsizing Tax and Compliance Exposure

4B.0 Introduction to the Chapter

Chapter 4A addressed the tax consequences that arise at the moment of the downsizing itself — the compensation owed for a surrendered function and the exit taxation triggered by a functional transfer. This chapter addresses a different and frequently under-analyzed category of exposure: the tax and compliance consequences that persist *after* the downsizing has been executed, arising not from the act of restructuring but from the residual operating model it leaves behind.

The distinction matters, but it should not be read as a sequencing instruction. The exposures addressed in this chapter — permanent-establishment risk (§4B.1), VAT fixed-establishment risk (§4B.2), Pillar Two effects (§4B.3), financing and double-taxation consequences (§4B.4--4B.5), and asset-level incentive clawback (§4B.6) — are not a checklist to be run once the new structure is live. They are constraints that should shape the design of the operating model addressed in Chapter 4A, not tests applied to it after the fact. A Group that first decides whether the Italian entity becomes a toll manufacturer or a commissionaire, and only then asks whether that choice creates a dependent-agent PE, a VAT fixed establishment, or an adverse Pillar Two effect, has inverted the correct order of analysis. The functional profile selected in Chapter 4A and the exposures analyzed in this chapter are properties of a single design decision, and the CFO's diagnostic — beginning in Chapter 2 and continuing through the compensation analysis in Chapter 4A — should incorporate this chapter's tests as design parameters from the outset, not as a compliance audit conducted on a structure already implemented.

Read this way, the chapter's four principal exposures are best understood as the tax architecture of the residual operating model, examined from four angles: whether the reduced Italian presence, or personnel formally employed elsewhere in the Group but functioning from Italy, constitutes a taxable presence under rules the downsizing was never designed to test (§4B.1); whether transitional arrangements between the downsized entity and the rest of the Group create a fixed establishment for VAT purposes under a materially different standard from the income-tax PE analysis (§4B.2); how the downsizing affects the Group's Pillar Two position and filing architecture (§4B.3); and the financing and cross-border valuation consequences of a reduced Italian operating base, including the risk that Italy and the recipient jurisdiction price the same restructuring differently (§4B.4--4B.5). The chapter closes, at §4B.6, with the narrower but frequently decisive question of incentive clawback limited to the assets or sites actually divested or repurposed — a downsizing-specific problem distinct from the total clawback exposure addressed in the closing chapter on full exit.

Because these exposures attach to the state of the residual operating model rather than to the act of restructuring, they persist indefinitely unless a subsequent decision changes that model. Chapter 4A's compensation and exit-tax analysis is a one-time valuation, closed at signing. This chapter is not: it should be revisited each time the residual operating model changes, and designed correctly the first time to avoid needing to be revisited at all.

4B.1 Post-Closure Permanent Establishment Risk (Art. 162 TUIR) and Dependent-Agent PE

Article 162 of the *Testo Unico delle Imposte sui Redditi* defines the permanent establishment for domestic purposes in terms substantially aligned with Article 5 of the OECD Model Tax Convention, following the amendments introduced by the 2018 Budget Law to incorporate the BEPS Action 7 anti-fragmentation and dependent-agent standards. A downsizing that converts a full-risk Italian manufacturer or distributor into a

limited-function entity does not, without more, eliminate the risk that a *different* taxable presence arises elsewhere in the structure — and in practice it frequently creates one, for two related reasons.

First, the fixed-place-of-business analysis under Article 162, paragraph 1, attaches to activity, not to formal corporate structure. Where the downsizing retains Italian personnel — whether formally transferred to a foreign Group entity, seconded, or engaged under a service arrangement — who continue to negotiate, conclude, or habitually play the principal role in concluding contracts on behalf of that foreign entity, Article 162, paragraph 6, treats that person's activity as constituting a permanent establishment of the foreign principal, regardless of where formal contracting authority is said to reside. The post-BEPS standard deliberately looks past the label "limited-risk distributor" or "commissionaire" to the substance of what the Italian personnel actually do; a title change unaccompanied by a genuine change in decision-making function does not withstand scrutiny under this standard, and the Agenzia delle Entrate has shown increasing sophistication in reconstructing the functional reality behind commissionaire and toll-manufacturing arrangements adopted in restructuring contexts.

Second, and distinctly, Article 162, paragraph 7, provides the independent-agent exception: an agent acting in the ordinary course of its own business, on behalf of a non-resident enterprise, does not by that fact alone create a PE for the enterprise it serves. The same paragraph then withdraws that exception in the specific circumstance a downsizing frequently produces: where the agent acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, it is *not* considered independent for purposes of the exception, and the dependent-agent analysis under paragraph 6 applies without the mitigation paragraph 7 would otherwise provide. This is worth stating precisely because it is easy to invert: paragraph 7 is not itself an anti-fragmentation rule, and its default position favors the agent, not the tax authority — the closely related enterprises carve-out is the exception to that default, not the default itself. (The anti-fragmentation rule proper is a separate mechanism, addressing the combined evaluation of complementary activities carried on through multiple places of business or persons that together form a cohesive business operation; it is not the provision at issue here.) The practical consequence for a downsizing is the same either way: where the downsized Italian entity distributes the Group's products under a commissionaire or limited-risk arrangement without also serving genuinely independent third-party principals, the closely related carve-out in paragraph 7 denies it the independent-agent exception, and the dependent-agent test in paragraph 6 must still be satisfied on its own terms — the loss of the paragraph 7 exception narrows the agent's defense, but it does not, by itself, establish a PE; paragraph 6's conditions (habitual contract conclusion, or habitually playing the principal role in concluding contracts, on the foreign principal's behalf) still have to be met.

Three fact patterns recur with sufficient frequency in downsizing restructurings to warrant identification at the design stage, rather than discovery on audit:

7. **Retained technical personnel operating remotely for a foreign principal.** Italian engineers formally transferred to, or seconded to, a foreign Group entity but continuing to work from Italy on product development or customer-facing technical support raise a fixed-place-of-business question independent of any contracting authority, since paragraph 1 does not require that contracts be concluded — only that the foreign principal's business be carried on, in whole or in part, through a place at the personnel's disposal in Italy.
8. **Sales personnel who negotiate locally but sign abroad.** A common post-downsizing structure has the Italian commercial team continue substantive negotiation with Italian customers while formal contract execution is routed to a foreign entity's signatory. Paragraph 6 targets precisely this pattern: habitually

playing the principal role leading to the conclusion of contracts is sufficient, and the location of the signature is not determinative where the substantive negotiation occurred in Italy.

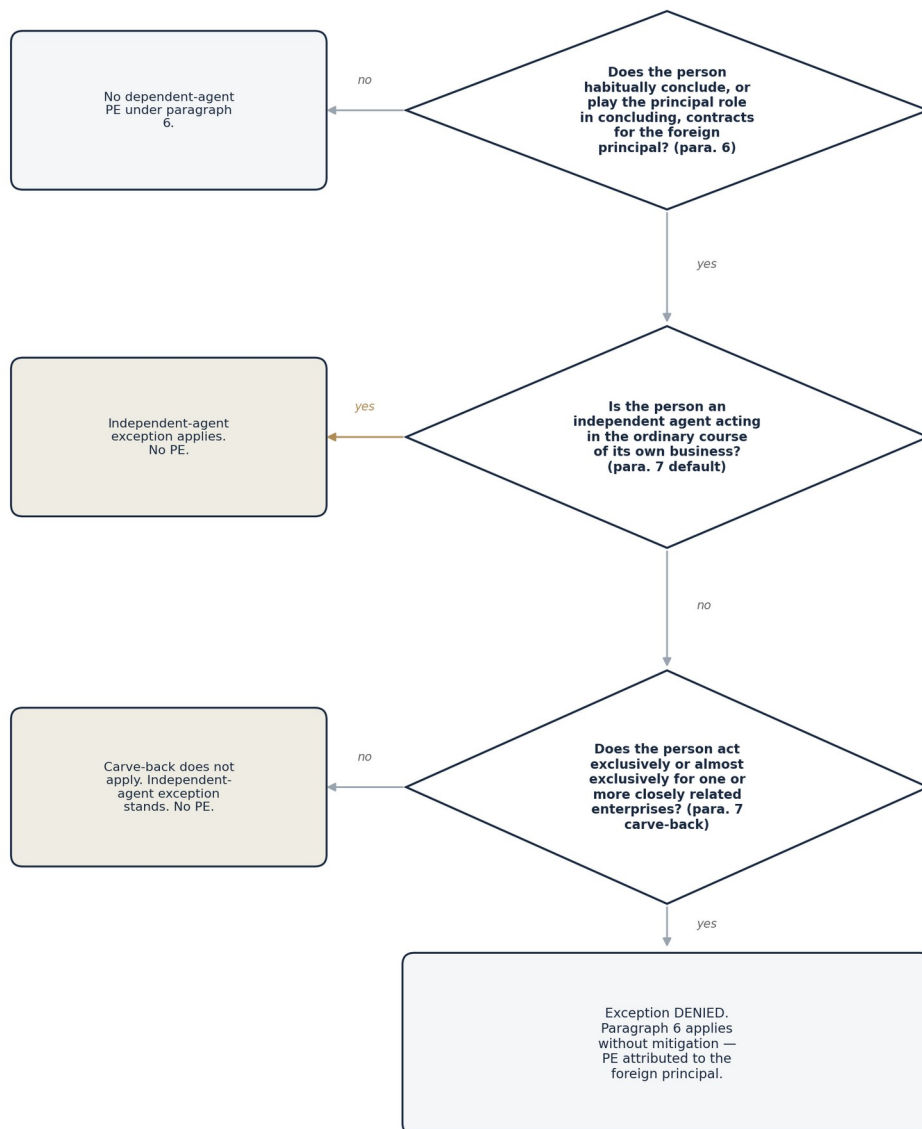
9. **A retained Italian warehouse or logistics function supporting a foreign principal.** Where the facility does more than the preparatory or auxiliary activities described in Article 162, paragraph 4 — for example, where it performs order fulfillment, quality control, or customer returns processing integral to the foreign principal's core business rather than merely storing goods — the preparatory-or-auxiliary exclusion is unavailable and the facility itself may constitute a fixed place of business.

The practical consequence for the CFO is that the functional downgrade priced in Chapter 4A as a transfer-pricing event may simultaneously generate a *second*, independent exposure: attribution of a taxable presence, and a corresponding share of the Group's profit, to Italy in respect of the foreign principal now formally holding the function. The two exposures are not substitutes — compensating the Italian entity for the functions it surrendered under Chapter 4A's framework does not, by itself, immunize the foreign principal against a PE finding if the substance of Italian-based activity continues to satisfy the dependent-agent test. Structuring the post-downsizing operating model to withstand this analysis — through genuine relocation of contracting authority, adequately resourced foreign decision-making, and documentation demonstrating where relevant decisions are in fact made — should accordingly be resolved as part of designing the Chapter 4A functional profile itself, not as a separate exercise conducted once that profile has already gone live.

DIRECTION CORRECTION *Paragraph 7's default favors the agent: an independent agent acting in the ordinary course of its own business does not, by that fact alone, create a PE for the foreign principal. The closely-related-enterprises language is the exception that withdraws that default — it does not itself define or grant an exclusion. Paragraph 7 is also not properly called "the anti-fragmentation rule"; that is a separate, complementary-activities mechanism elsewhere in Article 162.*

Article 162 TUIR — Dependent-Agent PE Logic

§4B.1 — paragraph 7's default favors the agent; the closely-related carve-back withdraws it



Article 162 TUIR — Dependent-Agent PE Logic — §4B.1 decision logic

MACHINE-READABLE INDEX — §4B.1

```

{
  "section": "4B.1",
  "concept": "Article 162 TUIR dependent-agent / independent-agent PE analysis",
  "trigger": "Retained Italian personnel or agent continuing to act for a foreign Group principal post-downsizing",
  "decision_test": "Para. 6: habitual conclusion of, or principal role in concluding, contracts for the foreign principal. Para. 7 default: independent-agent exception applies UNLESS the agent acts exclusively/almost exclusively for closely related enterprises, in which case the exception is withdrawn.",
  "required_data": [
    "Actual decision-making function of Italian personnel",
    "contracting authority location",
    "customer base — exclusive to Group vs. genuinely independent third parties served"
  ],
  "responsible_owner": "Group tax function with Italian counsel",
  "deadline": "At design of the post-downsizing functional profile — not after go-live",
  "required_evidence": "Documentation of where relevant decisions are in fact made; evidence of genuinely independent third-party principals served, if relied upon",
  "applicable_authority": "Art. 162, paras 1, 4, 6, 7, TUIR (post-2018 Budget Law, BEPS Action 7-aligned)",
  "outcome_if_yes": "PE attributed to the foreign principal; profit allocation to Italy",
  "outcome_if_no": "No PE under this test alone (VAT fixed-establishment tested separately — see 4B.2 entry)",
  "reverification_date": "On any change to the Italian personnel's actual functions or customer base"
}
  
```

4B.2 VAT Fixed-Establishment Risk on Transitional Arrangements

The permanent-establishment analysis under Article 162 TUIR and the fixed-establishment ("stabile organizzazione ai fini IVA") analysis under Article 7, paragraph 1, letter d), of Presidential Decree 633/1972 and the corresponding EU VAT Directive provisions are legally independent inquiries, applying different tests and frequently yielding different results on the same facts — a distinction the CJEU has reinforced with some consistency and one a foreign CFO accustomed to a single "permanent establishment" concept in other jurisdictions may not anticipate.

The governing EU standard, as articulated by the Court of Justice, requires a sufficient degree of permanence and a suitable structure in terms of human and technical resources enabling the establishment to receive and use services supplied to it for its own needs, or to provide the services it supplies — a standard the Court applied restrictively in *Welmory* (C-605/12) and, more directly relevant to intra-group restructuring, in *Titanium* (C-931/19), where the absence of the establishment's own staff at the relevant premises was held to preclude a fixed establishment notwithstanding a real property presence. The Court's guidance since *Berlin Chemie* has, if anything, continued in the restrictive direction, not the other way: in *Berlin Chemie A. Menarini* (C-333/20), the Court confirmed that the human and technical resources of one group company cannot automatically be attributed to another merely because they are affiliated, and subsequent case law has reinforced rather than qualified that position. In *Cabot Plastics Belgium* (C-232/22), the Court held that a toll manufacturer performing ancillary services for a foreign principal did not, without more, constitute a fixed establishment of that principal. In *Adient* (C-533/22, judgment of 13 June 2024), on facts closely resembling a post-downsizing toll-manufacturing and transitional-services structure, the Court went further: group affiliation and a services contract between the parties are not sufficient, on their own, to establish a fixed establishment; the subsequent destination or supply of the goods processed is irrelevant to the analysis; and — the point most directly relevant to a TSA — the same human and technical resources cannot ordinarily be treated as simultaneously supplying the service (on the local entity's side) and receiving it (on the foreign principal's side). Contractual control over the local entity's activity is not, by itself, equivalent to the foreign principal having those resources at its own disposal.

The practical exposure arises most acutely in the interval — often extending well beyond the period originally budgeted — during which a Transitional Services Agreement (TSA) keeps the downsized Italian entity providing back-office, procurement, technical, or logistics support to the foreign principal while the Group's target operating model is implemented elsewhere. This interval is a recurring source of post-restructuring VAT dispute in practice, and the reason is structural rather than incidental: the Group designs the TSA around a commercial expectation of temporariness, while the tax authority examining it later asks whether, on the facts as they existed during the period under review, the local entity's resources were genuinely its own — used to supply the service to the foreign principal — rather than resources placed at the foreign principal's disposal to receive services from itself. Duration is relevant evidence of that question but is not, on the post-*Adient* case law, decisive on its own: a long-running TSA on functionally unchanged terms is one factor weighing toward a finding that the arrangement has become the entity's ongoing operating model, but the governing tests remain resource availability, permanence, and disposal, and a short TSA structured so that the foreign principal's own resources — rather than the Italian entity's — are doing the receiving can fail the fixed-establishment test regardless of how long it runs, just as a long TSA structured correctly against those tests can pass it. A TSA structured and priced correctly for corporate-income-tax and transfer-pricing purposes under the Chapter 4A framework does not, without separate analysis, resolve the question of where VAT is due on services rendered to or received from the Italian entity under that same agreement, nor the question of Italian VAT registration obligations for the foreign principal. The CFO's financial model should accordingly treat TSA duration itself as a

risk variable, with an explicit outside date and a governance checkpoint — ideally supervised by the same CRO function addressed in Chapter 7 — at which the arrangement is either terminated on schedule or consciously re-priced and re-characterized rather than allowed to lapse into a de facto permanent structure: the longer a transitional arrangement persists on functionally unchanged terms, the weaker the "transitional" characterization becomes and the stronger the case for a fixed-establishment finding, independent of how the same arrangement is treated for income-tax purposes.

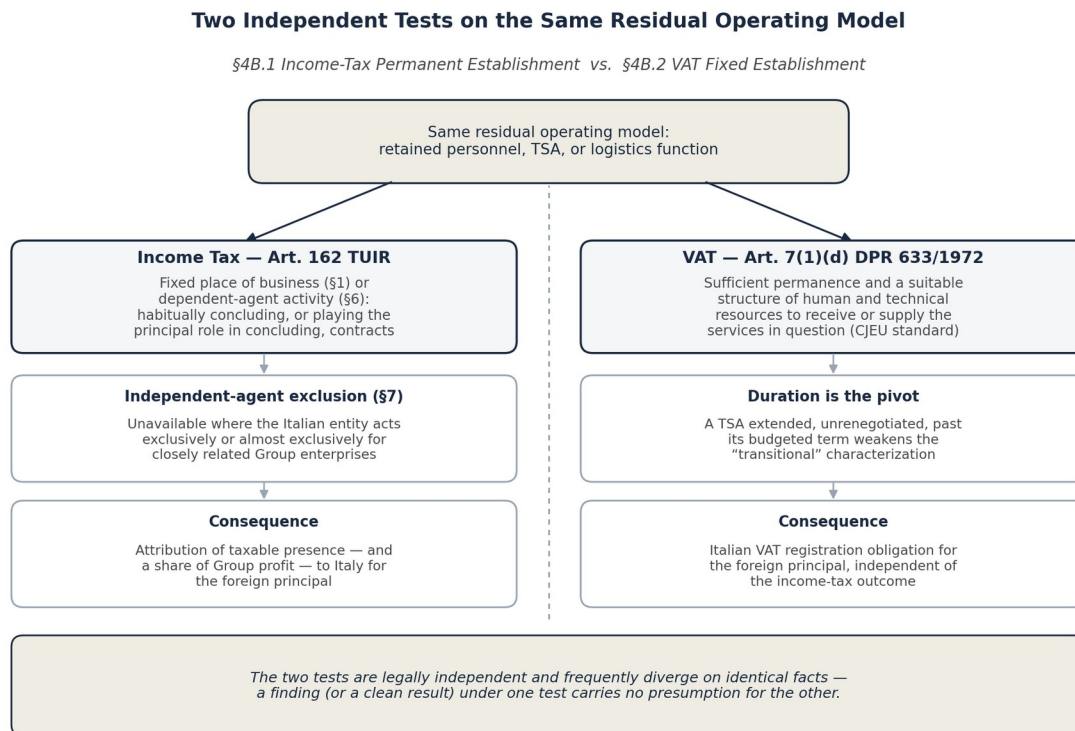
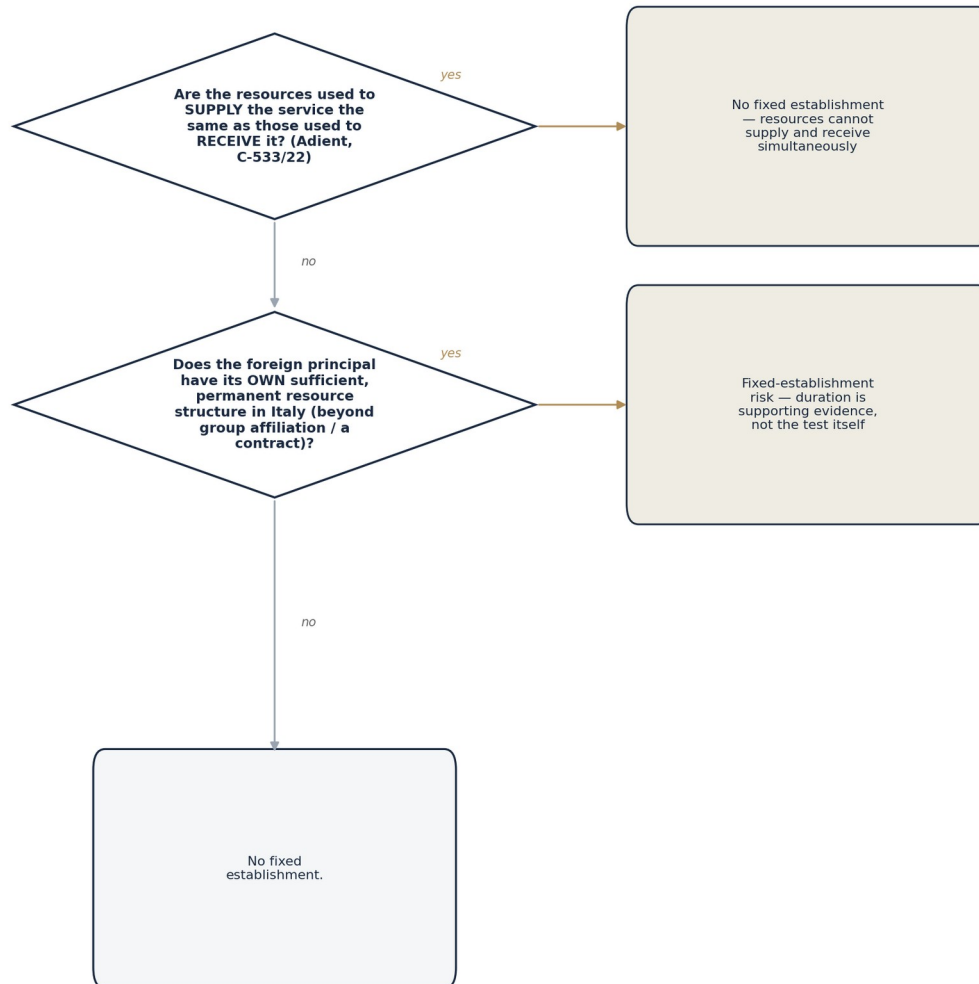


Figure 4B.1 — Two Independent Tests on the Same Residual Operating Model — Income-tax PE vs. VAT fixed establishment

DIRECTION CORRECTION The CJEU line since *Berlin Chemie* (C-333/20) has continued in the restrictive direction: *Cabot Plastics* (C-232/22) and *Adient* (C-533/22, 13 June 2024) both confirm that group affiliation and a services contract, on their own, are insufficient to establish a fixed establishment. Duration alone is not decisive; resource separateness — whether the same resources are simultaneously supplying and receiving the service — is the operative test.

VAT Fixed Establishment — the Post-Adient Test

§4B.2 — resource separateness governs; group affiliation and contract duration alone do not



VAT Fixed Establishment — the Post-Adient Test — §4B.2 decision logic

MACHINE-READABLE INDEX — §4B.2

```

{
  "section": "4B.2",
  "concept": "VAT fixed-establishment risk on TSAs and toll-manufacturing arrangements",
  "trigger": "Transitional Services Agreement or toll-manufacturing structure between the downsized Italian entity and the foreign principal",
  "decision_test": "Are the human/technical resources used to supply the service the same as those used to receive it (Adient, C-533/22)? If genuinely separate, does the foreign principal have its OWN sufficient, permanent resource structure in Italy, beyond group affiliation or a services contract?",
  "required_data": [
    "Resource allocation and control mapping between the two entities",
    "TSA duration and renegotiation history",
    "actual operational direction of the Italian entity's activity"
  ],
  "responsible_owner": "Group indirect tax function with Italian VAT counsel",
  "deadline": "Governance checkpoint at TSA's original outside date; reassessed if extended",
  "required_evidence": "Resource-separateness analysis distinct from the Art.162 PE analysis",
  "applicable_authority": "Art. 7(1)(d), DPR 633/1972; CJEU: Welmory (C-605/12), Titanium (C-931/19), Berlin Chemie (C-333/20), Cabot Plastics (C-232/22), Adient (C-533/22)",
  "outcome_if_yes_same_resources": "No fixed establishment",
  "outcome_if_no_separate_and_sufficient": "Fixed-establishment risk; Italian VAT registration obligation for the foreign principal",
  "reverification_date": "At each TSA renewal or extension beyond its original outside date"
}
  
```

4B.3 Pillar Two / GloBE Exposure and DAC9 Filing Obligations at Closure

Italy implemented the OECD/G20 Pillar Two global minimum tax framework through Legislative Decree 209 of 27 December 2023, introducing the Qualified Domestic Minimum Top-up Tax (QDMTT), the Income Inclusion Rule (IIR), and the Undertaxed Profits Rule (UTPR) applicable to constituent entities of multinational groups meeting the €750 million consolidated revenue threshold under Article 2 of the Decree. A downsizing that reduces the Italian entity's headcount, asset base, and profitability interacts with this framework in ways a CFO evaluating the restructuring purely on a standalone-entity basis may not anticipate.

Three interactions merit particular attention. First, the substance-based income exclusion (SBIE) under the GloBE rules — reducing the top-up tax base by a formulaic percentage of eligible payroll costs and the carrying value of tangible assets — declines mechanically as the Italian entity's headcount and asset base are reduced by the downsizing, other conditions being equal increasing the residual top-up-tax base on any remaining low-taxed income in Italy — an effect that runs counter to the intuition that downsizing reduces the Italian entity's overall tax footprint, though whether it produces actual top-up tax due depends on the entity's post-downsizing effective tax rate: Italy's ordinary combined corporate tax burden typically exceeds the 15 percent GloBE minimum, so a Group should treat this interaction as a modelling requirement to be run against the specific post-downsizing numbers, not as a presumption of adverse Pillar Two exposure; actual exposure generally requires a specific low-ETR driver — a loss position, a timing mismatch, a permanent difference, or an incentive-heavy profile — to be present alongside the reduced SBIE base. Second, the one-time restructuring gain or loss recognized under the Chapter 4A compensation analysis must be correctly characterized in the GloBE income computation, which starts from financial accounting net income subject to specified adjustments under Chapter 3 of the OECD Model Rules and Title III of the implementing Decree; a compensation payment that is fully taxable for domestic corporate-income-tax purposes is not automatically treated identically for GloBE purposes, and the two computations should be reconciled rather than assumed to converge. Third, the downsizing may itself be a triggering or complicating event for the transitional CbCR Safe Harbour under the OECD's transitional guidance, insofar as a functional change alters the routine-profit or de-minimis tests on which the Safe Harbour depends for the jurisdiction; a Group relying on the Safe Harbour to avoid full GloBE computation in Italy should reassess that reliance as part of the downsizing's diagnostic phase under Chapter 2, not after the restructuring has closed. Where the functional reallocation in Chapter 4A relocates the surrendered function to a low-tax jurisdiction outside the EU, Group tax should separately confirm whether the relocated function's income falls within the scope of the Italian parent's or an intermediate EU entity's CFC regime under Article 167 TUIR; that analysis is a Chapter 4A-adjacent design question rather than a Pillar Two question, and it is flagged here only to ensure it is not assumed to be subsumed within the GloBE analysis above.

Separately, and procedurally rather than substantively, Council Directive (EU) 2025/872 (DAC9) — in force from 1 January 2026, amending Directive 2011/16/EU to establish a centralized EU mechanism for the exchange of GloBE Information Returns (referred to in the Italian implementing framework as the *Comunicazione Rilevante*) among Member State tax administrations — changes the filing architecture rather than the tax liability itself, permitting a single designated filing entity within the EU to file the return centrally for exchange to all relevant Member States rather than requiring local filing in each. Italy has, as of the time of writing, substantially completed its implementing framework: the *legge di delegazione europea 2025* (Law 36/2026, 25 March 2026) authorized transposition of the Directive; the Ministry of Economy and Finance published interpretive guidelines on completing the *Comunicazione Rilevante* on 30 October 2025; and the Director of the Agenzia delle Entrate issued the *provvedimento* setting the technical modalities, elements, and conditions for transmission on 9 April 2026, followed by a further MEF *direttiva interpretativa* on central-filing mechanics on 22 June 2026. A downsizing that changes which Group entity is best positioned to serve as the *Italian point of*

contact for this framework should have that position reassessed as part of the post-downsizing compliance calendar — but the choice of *central filing entity* itself is made at the ultimate parent (or otherwise designated filing entity) level for the Group as a whole, not selected freely by the Italian subsidiary or its advisors; the Italian constituent entity may retain its own notification obligation, and a fallback local-filing obligation, independent of whichever entity the Group has designated to file centrally. Because implementing guidance in this area has continued to develop through the first half of 2026, the specific procedural detail in this section should be re-verified against the current MEF and Agenzia delle Entrate guidance before being relied upon in client-facing material — the substantive Pillar Two consequences addressed above are comparatively stable; the filing mechanics are not.

MODELLING NOTE, NOT A PRESUMPTION *The SBIE base decline from reduced headcount/assets is mechanical, but actual top-up tax exposure requires a specific low-ETR driver — a loss position, a timing mismatch, a permanent difference, or an incentive-heavy profile. Italy's ordinary combined corporate tax burden typically exceeds the 15% GloBE minimum. Treat this as a modelling requirement against the specific post-downsizing numbers, not a presumed adverse outcome.*

MACHINE-READABLE INDEX — §4B.3

```
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  "concept": "Pillar Two / GloBE SBIE interaction and DAC9 central filing",
  "trigger": "Downsizing reduces Italian entity's headcount, tangible-asset base, or profitability",
  "decision_test": "Model post-downsizing effective tax rate against the 15% GloBE minimum; SBIE base declines mechanically, but actual top-up tax requires a specific low-ETR driver (loss position, timing mismatch, permanent difference, incentive-heavy profile) given Italy's ordinarily-above-15% combined corporate burden",
  "required_data": [
    "Post-downsizing payroll and tangible-asset carrying values (SBIE inputs)",
    "GloBE income computation reconciled against domestic taxable compensation gain",
    "CbCR Safe Harbour eligibility re-test if relocating to a low-tax jurisdiction"
  ],
  "responsible_owner": "Group Pillar Two compliance function",
  "deadline": "GIR/Comunicazione Rilevante filing per DAC9 central-filing calendar; Italian notification/fallback obligations run separately",
  "required_evidence": "GloBE income reconciliation; Safe Harbour re-test documentation",
  "applicable_authority": "D.Lgs. 209/2023 (Pillar Two); Directive (EU) 2025/872 (DAC9, in force 1 Jan 2026); AdE Provvedimento 9 Apr 2026; MEF Direttiva interpretativa 22 Jun 2026",
  "outcome_if_yes": "Modelling required — not a presumed adverse outcome absent a specific low-ETR driver",
  "outcome_if_no": "No material Pillar Two effect from the downsizing alone",
  "reverification_date": "Each fiscal year post-downsizing while SBIE base continues to decline"
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4B.4 Cross-Border Financing: Interest Deductibility Cap, Withholding Tax, and Loan Waivers

A downsizing frequently changes both sides of the Italian entity's financing position: its capacity to service existing intra-group debt, given reduced operating cash flow, and the Group's willingness to continue funding an entity whose scope has been deliberately reduced. Three provisions govern the tax consequences of adjusting that financing position.

Interest deductibility. Article 96 TUIR limits the deductibility of net interest expense to 30 percent of the entity's *Risultato Operativo Lordo* (ROL, broadly EBITDA computed on tax values), implementing the EU Anti-Tax Avoidance Directive's fixed-ratio rule. A downsizing that reduces EBIT and EBITDA — precisely the intended commercial effect of shedding a function or a site — mechanically narrows the entity's ROL and therefore its interest-deductibility capacity, at the same time that the restructuring itself may be debt-funded or that existing intra-group debt was sized for the pre-downsizing operating scale. The result, absent proactive planning, can be an increase in non-deductible interest expense precisely in the period when the entity can least afford it — though the effect is not automatic or immediate: Article 96 also allows unused ROL capacity from the preceding five tax periods, and interest disallowed in a given period, to be carried forward without time limit, so an entity entering the downsizing with banked ROL headroom or excess carried-forward interest capacity may absorb a reduced post-downsizing ROL for several periods before any actual deduction is lost. Groups should model the

post-downsizing ROL trajectory *together with* the entity's existing carryforward position as part of the Chapter 2 diagnostic, rather than assuming the current-year ROL reduction translates directly into current-year non-deductibility, and consider, where the combined numbers warrant it, a corresponding reduction or restructuring of intra-group debt — including partial equitization — timed to the point at which the carryforward cushion is actually projected to be exhausted.

Withholding tax on outbound payments. Interest and royalty payments from the downsized Italian entity to Group affiliates remain subject, absent relief, to Italian withholding tax under Articles 26 (interest) and 25 (royalties) of Presidential Decree 600/1973, with relief available under the domestic implementation of the EU Interest and Royalties Directive (2003/49/EC) at Article 26-*quater* of the same Decree, where the beneficial-ownership and minimum-holding conditions specific to that provision are satisfied, or under the applicable bilateral tax treaty where the Directive's conditions are not met. The three routes — ordinary withholding, Article 26-*quater* relief, and treaty relief — carry different beneficial-ownership and procedural requirements, and which route applies should be confirmed for interest and for royalties separately rather than assumed to track each other. A downsizing that redirects payment flows — for example, routing royalties through a different Group entity following the functional reallocation addressed in Chapter 4A — requires a fresh beneficial-ownership and treaty-eligibility analysis for the new payment structure; treaty relief obtained for the pre-restructuring flow does not automatically extend to a restructured flow directed to a different recipient, and the Agenzia delle Entrate has increasingly scrutinized beneficial-ownership claims in restructuring contexts where payment flows change contemporaneously with a functional downgrade.

Loan waivers. Article 88, paragraph 4-*bis*, TUIR is narrower than it is often described: it applies specifically to a waiver of credits by a **shareholder** (*socio*) of the debtor — not to intra-group receivables generally. Where the waiving creditor is the Italian entity's direct or indirect parent, which is the common case in a downsizing funded by the foreign HQ, the shareholder condition is ordinarily satisfied and the provision applies as described below. Where the waiving creditor is instead a sister company or another Group affiliate without an equity stake in the Italian debtor, Article 88, paragraph 4-*bis*, does not apply at all, and the waiver falls back to the ordinary *sopravvenienza attiva* rule at Article 88, paragraph 1 — under which the *full* amount waived is, absent a separate exemption, taxable income to the debtor, not merely the amount exceeding the creditor's fiscal basis. Confirming which entity within the Group is actually extending and waiving the credit — and specifically whether it holds equity in the Italian debtor — is accordingly the threshold question, and should precede any assumption that the excess-over-fiscal- value relief below is available at all.

Where the shareholder condition is satisfied, Article 88, paragraph 4-*bis*, excludes the waived amount from the debtor's taxable income only up to the fiscal value of the receivable in the shareholder's hands, and requires the debtor to obtain from the shareholder a sworn statement (or equivalent documentation) confirming that fiscal value. The statute's consequence for silence is stricter than a simple documentation formality: **absent that communication, the fiscal value of the credit is deemed to be zero**, which makes the *entire* waived amount taxable to the debtor as a *sopravvenienza attiva*, not merely an amount exceeding some unstated basis. A waiver executed without first obtaining and verifying the shareholder's fiscal-value statement therefore risks the worst outcome available under the provision, not a partial one — a result that can convert a well-intentioned capital-support measure into an unplanned tax cost if the documentation is not obtained and verified before the waiver is executed, rather than after.

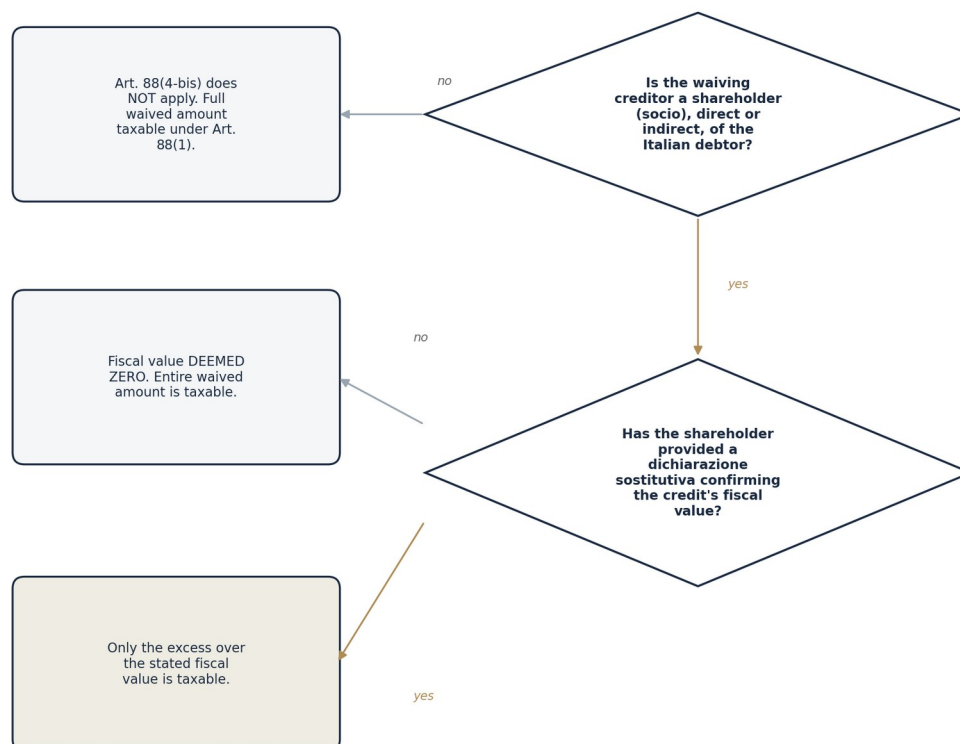
This documentation requirement carries a practical complication specific to the foreign-parent fact pattern this guide addresses, though the form the complication takes should be checked case by case rather than assumed uniform. The sworn statement contemplated by Article 88, paragraph 4-*bis*, TUIR is an Italian formality —

typically a *dichiarazione sostitutiva di atto notorio* — designed around a domestic declarant able to execute it directly under Italian self-certification rules. A foreign parent shareholder, whether a US or EU holding company, is frequently unfamiliar with the form, and depending on the jurisdiction and the receiving Italian counterparty's risk tolerance, the Agenzia delle Entrate may in practice expect the declaration to be supported by notarization in the shareholder's home jurisdiction, followed by legalization or apostille — a chain that, where required, can add weeks to a closing timeline the Group had not budgeted for. The statute itself does not mandate a universal apostille requirement for every foreign shareholder; what it requires is the fiscal-value communication, in a form the debtor and its advisors are prepared to defend as equivalent evidence if examined. A CFO planning a loan waiver as part of the downsizing's capital structure should confirm both the shareholder status of the waiving creditor and the acceptable evidentiary form for that specific jurisdiction early, in parallel with the compensation and governance workstreams addressed in Chapters 3 and 4A, rather than treating either question as a closing-mechanics item to be resolved once the commercial terms are settled.

SCOPE CORRECTION Article 88(4-bis) applies specifically to waivers by a shareholder (*socio*) of the debtor — not to intra-group receivables generally. A waiver by a non-shareholder Group affiliate gets no relief at all: full taxability under Art. 88(1). Silence on fiscal value is not neutral — it defaults to zero, making the entire waived amount taxable even where the shareholder condition is met.

Article 88(4-bis) TUIR — Loan Waiver Taxability

§4B.4 — the shareholder test is the threshold gate; silence on fiscal value defaults to zero



Article 88(4-bis) TUIR — Loan Waiver Taxability — §4B.4 decision logic

MACHINE-READABLE INDEX — §4B.4

```

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  "section": "4B.4",
  "concept": "Article 88(4-bis) TUIR loan-waiver taxability",
  "trigger": "Group creditor proposes to waive a receivable against the downsized Italian entity",
  "decision_test": "Is the waiving creditor a shareholder (socio), direct or indirect, of the Italian debtor? If not, para. 4-bis does not apply at all. If yes, has the shareholder provided a dichiarazione sostitutiva confirming the credit's fiscal value?",
}
  
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"required_data": [
  "Cap table / equity chain confirming shareholder status of the waiving entity",
  "creditor's fiscal basis in the receivable"
],
"responsible_owner": "Group tax function coordinating with the foreign parent's finance team",
"deadline": "Before the waiver is executed",
"required_evidence": "Dichiarazione sostitutiva di atto notorio (or jurisdiction-appropriate equivalent, potentially requiring notarization/apostille)",
"applicable_authority": "Art. 88, para. 4-bis, TUIR",
"outcome_if_not_shareholder": "Full waived amount taxable under Art. 88 para. 1 — no fiscal-basis relief available",
"outcome_if_shareholder_no_declaration": "Fiscal value deemed zero — full waived amount taxable",
"outcome_if_shareholder_with_declaration": "Only the excess over stated fiscal value is taxable",
"reverification_date": "Not applicable — one-time determination at waiver execution"
}

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4B.5 Cross-Jurisdictional Valuation Disputes: MAP, APA, and the Arbitration Convention

The compensation and exit-tax analysis developed in Chapter 4A necessarily values the functional transfer from the Italian side of the transaction: what the Italian entity surrendered, and what it should be compensated for surrendering. The jurisdiction receiving the relocated function performs, or is entitled to perform, the identical analysis from its own side — and there is no mechanism compelling the two tax administrations to reach the same number. Where Italy determines the compensable value of the surrendered function at one figure and the recipient jurisdiction recognizes a materially lower figure as deductible or as the correct arm's-length consideration, the difference is not absorbed; it is taxed twice, once in each jurisdiction, on the same economic event.

Three mechanisms exist to resolve this outcome, and a CFO's post-downsizing compliance calendar should identify, before the restructuring closes, which mechanism the Group intends to rely on if the exposure materializes. The Mutual Agreement Procedure (MAP) under the applicable bilateral tax treaty's mutual-agreement article, or under the EU Directive on Tax Dispute Resolution Mechanisms (Directive (EU) 2017/1852) where both jurisdictions are Member States, allows the two competent authorities to negotiate a common position, though without a guaranteed outcome or a binding deadline in every treaty. Where both jurisdictions are EU Member States, the Arbitration Convention (90/436/EEC) provides a stronger procedural guarantee: if the competent authorities fail to reach agreement within the Convention's prescribed period, the dispute proceeds to binding arbitration, giving the Group a defined endpoint the ordinary MAP process does not always offer. Finally, an Advance Pricing Agreement (APA) — ideally bilateral or multilateral, agreed with both the Italian and the recipient jurisdiction's tax authorities before the functional transfer is implemented — is the preventive alternative to all of the above, converting a post-closing dispute into a pre-closing negotiated certainty. Given the lead time a bilateral APA typically requires, the decision to pursue one should be made during the Chapter 4A compensation analysis, not after the transfer-pricing position has already been filed and a divergent assessment received from the other side.

A further, practical point warrants emphasis independent of which mechanism the Group ultimately relies on, though it should not be overstated. Both the ordinary MAP process and Arbitration Convention proceedings are slow relative to a CFO's typical planning horizon — competent-authority negotiations of this kind commonly run two to four years from initiation to resolution — but payment or provisioning is not invariably required in both jurisdictions for the full duration of that period: many treaties and most EU member states provide some form of domestic collection suspension or relief while a MAP case is pending, and the EU Directive on Tax Dispute Resolution Mechanisms (Directive (EU) 2017/1852) offers a more structured, deadline-bound mandatory-resolution route than the ordinary treaty MAP process, with defined stages and a complaint procedure where a competent authority fails to act. Whether collection is in fact suspended during the procedure is a jurisdiction-specific and treaty-specific question that should be confirmed rather than assumed either way. Where suspension is not available or is only partial, the Group should size a cash reserve, or agree an indemnity

arrangement between parent and Italian subsidiary, calibrated to the actual liquidity gap once the applicable suspension and relief mechanisms have been checked — not to a default assumption that both jurisdictions will collect in full throughout a multi-year procedure.

4B.6 Incentive Clawbacks Limited to Divested Assets or Sites

The Italian *Industria 4.0* tax-credit regime, under Article 1, paragraphs 1051–1063, of Law 178/2020 (as subsequently extended and amended), and the *Transizione 5.0* regime, under Article 38 of Decree-Law 19/2024, are related but materially different mechanisms, and treating them as a single regime with a single monitoring period is a common and consequential error. Each conditions the credit's retention on the beneficiary asset remaining within the Italian business for a defined period, with disposal or relocation within that period triggering a clawback (*revoca dell'agevolazione*) of the credit previously claimed, together with interest — but the length of the period, and what counts as a triggering event, differ between the two.

Industria 4.0. The monitoring period runs through 31 December of the **second year following the asset's interconnection** (not, as is sometimes assumed, the asset's fiscal depreciation period, which is typically longer and governs amortization rather than the incentive's surveillance window). The triggers are an onerous disposal of the asset or its transfer to a production facility located abroad; mere decommissioning of an asset, or its movement between production sites within Italy, is not, without more, equivalent to a foreign relocation and does not automatically trigger clawback on that basis alone — though the fact pattern should still be checked against the specific circumstances, since a decommissioning that is in substance a disguised export can still be examined on its economic reality.

Transizione 5.0. The monitoring period under Article 38, paragraph 14, of Decree-Law 19/2024 runs through 31 December of the **fifth year following completion** of the investment — materially longer than *Industria 4.0*'s two-year window — and the trigger set is broader: it covers not only onerous disposal and relocation abroad but also non-business use of the asset and transfer to a *different* production facility, including one belonging to the same taxpayer, which *Industria 4.0*'s narrower trigger set does not reach in the same way. The statute also provides for compatible application of a replacement-investment relief analogous to the mechanism described below for *Industria 4.0*, but the two regimes' replacement rules should not be assumed identical without checking the specific conditions attached to each.

The point of practical importance for a downsizing — as distinct from the full-exit scenario addressed in the closing chapter — is that the clawback exposure under both regimes attaches asset-by-asset and site-by-site, not to the beneficiary entity's tax position as a whole. A downsizing that divests, decommissions, or relocates a specific machinery line or production site while the entity continues to operate a distinct function or site elsewhere exposes only the tax credit associated with the *divested* assets to clawback; credits associated with assets remaining in continued Italian use are unaffected by the fact that the entity's overall scope has been reduced. This asset-level scoping is frequently missed by CFOs who, having budgeted for total clawback exposure based on the entity's cumulative incentive claims, discover — correctly, on closer analysis — that the exposure is materially smaller once mapped, asset by asset and regime by regime, against the specific assets identified as terminating in the Chapter 2 diagnostic rather than against the entity's full incentive history. The corollary is equally important: assets classified in Chapter 2 as surviving-and-transferring to another Group entity, whether inside or outside Italy, trigger the clawback on relocation even though the asset itself continues to be used productively within the Group — relocation, not abandonment, is the operative trigger under both governing decrees, a distinction with material planning consequences where the downsizing contemplates redeploying equipment to a lower-cost jurisdiction rather than scrapping it.

The clawback exposure identified through this asset-level mapping is not, in every case, a fixed cost the CFO must simply absorb. For **Industria 4.0** specifically, the Agenzia delle Entrate has confirmed, in Circolare n. 9/E of 23 July 2021, that the disposal of a *credito d'imposta beni strumentali* asset during its two-year surveillance period does not trigger recapture where, within the same tax period as the disposal, the beneficiary replaces the asset with a new tangible asset of equal or superior technological specification (measured against Allegato A to Law 232/2016) and completes the same interconnection and attestation formalities originally required — a substitution mechanism carried forward administratively from the analogous rule first codified for the preceding iperammortamento regime at Article 1, paragraph 35, of Law 205/2017. Where the replacement asset's cost is lower than the divested asset's, the credit is recalculated downward to the new cost rather than lost outright; where it is equal or higher, the residual credit continues on its original schedule without adjustment. For a downsizing that relocates a production line to a Group facility elsewhere rather than closing it outright, this offers a genuine planning lever specifically within the Industria 4.0 window: timing the replacement investment in the surviving Italian operation, where one exists, to fall within the same fiscal year as the divestment can neutralize what would otherwise be a full two-year-window recapture. The equivalent analysis for a Transizione 5.0 asset should be run separately, against that regime's own five-year window and its own compatible-replacement conditions under Article 38, paragraph 14, rather than assumed to mirror the Industria 4.0 mechanism on the same timeline; conflating the two windows is precisely the error this section opened by flagging. In both cases, the evaluation belongs in the Chapter 2 diagnostic's asset-by-asset mapping, not discovered after the divestment has already been executed and the relevant fiscal year has closed.

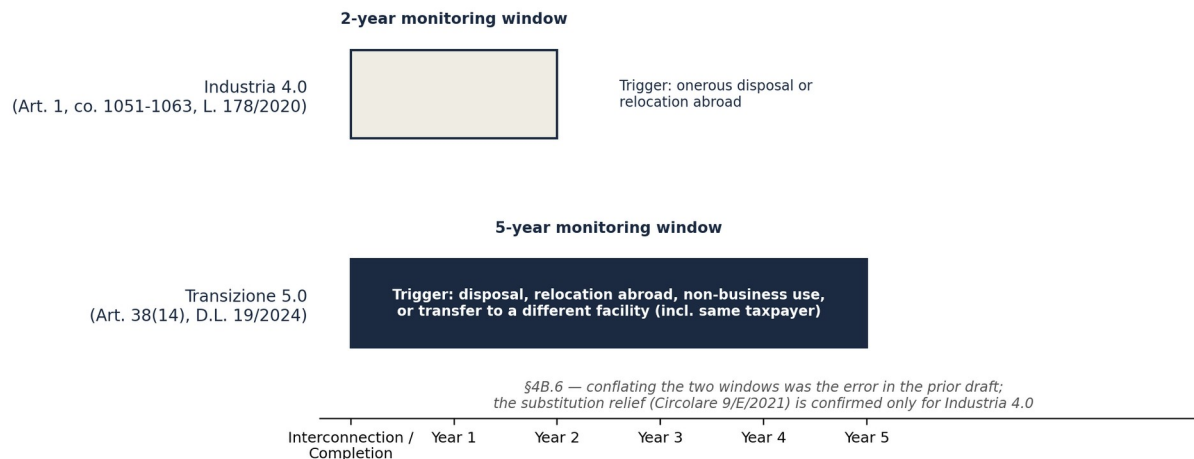
This asset-level logic does not extend uniformly to every incentive the entity may hold. Regional and employment-linked incentives — grants administered by Invitalia, ZES (*Zona Economica Speciale*) benefits, and PNRR-funded regional development contributions — frequently carry their own recapture rules, tied variously to headcount-maintenance covenants, investment-location commitments specific to the regional scheme rather than to Italy generally, or job-creation targets measured at the level of the funded site. A clawback analysis conducted solely under the Industria 4.0 or Transizione 5.0 framework will not capture these obligations, and each such incentive held by the entity should be independently reviewed against its own governing decree or grant agreement as part of the Chapter 2 diagnostic, rather than assumed to follow either regime's asset-level clawback logic.

Why This Matters to a Foreign Parent

A restructuring does not end on the day production stops or headcount is reduced. It ends only when the resulting operating model has proved capable of surviving the scrutiny that follows: a permanent-establishment challenge to the new functional profile, a VAT fixed-establishment finding on an arrangement the Group considered merely transitional, a Pillar Two computation that behaves counter-intuitively as substance is withdrawn, a financing structure that no longer fits the entity's reduced earning capacity, a valuation dispute between two tax administrations pricing the same transfer differently, and an incentive clawback scoped more narrowly, or more broadly, than assumed. None of these exposures is generated by the transaction itself; each is a property of the operating model the transaction leaves behind, and each should therefore be treated as a design constraint on that model — decided in parallel with the Chapter 4A compensation analysis — rather than as a compliance item to be monitored once the model is already in place. Chapter 5 now turns to the third co-equal pillar, labor law, addressing the collective-dismissal and workforce-transition mechanics that the diagnostic in Chapter 2 and the tax analysis in Chapters 4A and 4B have so far treated only as a classification input.

REGIME CONFLATION CORRECTED *Industria 4.0 and Transizione 5.0 are not a single regime with a single monitoring period. Industria 4.0's window runs 2 years from interconnection with a narrower trigger set; Transizione 5.0's window runs 5 years from completion with a broader trigger set including non-business use and transfer to a different facility of the same taxpayer. The substitute-asset relief (Circolare 9/E/2021) is confirmed for Industria 4.0; Transizione 5.0's own replacement relief under Art. 38(14) should be checked on its own terms.*

Recapture Windows: Industria 4.0 vs. Transizione 5.0



Recapture Windows: Industria 4.0 vs. Transizione 5.0 — §4B.6 timeline comparison

MACHINE-READABLE INDEX — §4B.6

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  "concept": "Industria 4.0 / Transizione 5.0 incentive clawback",
  "trigger": "Divestment, decommissioning, or relocation of a credito d'imposta beni strumentali asset",
  "decision_test": "Which regime applies (Industria 4.0 vs Transizione 5.0)? Is the triggering event within that regime's specific monitoring window and trigger set? Is a same-fiscal-year qualifying replacement asset available?",
  "required_data": [
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    "interconnection or completion date establishing the monitoring window",
    "replacement asset specifications if substitution is contemplated"
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  "deadline": "Industria 4.0: through 31 Dec of 2nd year post-interconnection. Transizione 5.0: through 31 Dec of 5th year post-completion. Replacement, where used, within the same fiscal year as the divestment.",
  "required_evidence": "Technical specification and interconnection/attestation documentation for any replacement asset",
  "applicable_authority": "Industria 4.0: Art. 1, paras 1051-1063, L. 178/2020; Circolare AdE 9/E of 23 Jul 2021 (substitution relief). Transizione 5.0: Art. 38(14), D.L. 19/2024.",
  "outcome_if_within_window_no_replacement": "Clawback of credit associated with the divested/relocated asset, plus interest",
  "outcome_if_within_window_with_qualifying_replacement": "Credit continues (recalculated if replacement cost is lower)",
  "outcome_if_outside_window": "No clawback on this asset",
  "reverification_date": "At each divestment or relocation decision within the applicable window"
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4B.7 What the Post-Downsizing Compliance Record Must Show

The exposures examined in this chapter arise from the entity's continuing existence after the downsizing rather than from the restructuring event itself, and the record that answers for them accordingly differs in kind from the one-time compensation file addressed at §4A.10.

What the post-downsizing compliance record must show. First, that the residual Italian footprint's permanent-establishment position under §4B.1 and its VAT fixed-establishment position under §4B.2 were assessed as distinct questions, on their own applicable tests, rather than assumed to track each other or to have been resolved once the income-tax analysis was complete. Second, that the Group's Pillar Two and DAC9 position addressed at §4B.3, and the financing structure addressed at §4B.4 — including any intra-group debt waiver —

were reassessed against the entity's post-downsizing profile rather than carried forward unchanged from its pre-downsizing filings. Third, that any incentive clawback exposure under §4B.6 was identified and quantified against the specific assets or sites divested, rather than assumed away on the basis that the Group's broader Italian incentive position remained intact.

Because these exposures persist for as long as the downsized entity continues to operate, the record that matters here is not a single contemporaneous file assembled once, as in Chapter 3 or Chapter 4A, but a position maintained on an ongoing basis — a distinction the CRO's dual mandate, addressed in Chapter 7, is specifically designed to hold open.

Chapter 5

Pillar III: Labor Law

Each section pairs a narrative discussion with a compact operational appendix

5.0 Introduction to the Chapter

The two pillars addressed thus far establish the corporate acts that give a downsizing decision legal effect, and the tax consequences that attach to the functional change those acts implement. This chapter addresses the third co-equal pillar, and it requires a different frame than the two before it.

Governance and tax are, in substance, exercises in getting a transaction correctly documented and correctly priced. Labor is not. The object of this chapter is not compliance with collective-dismissal procedure for its own sake; it is the successful execution of a workforce transition that allows the redesigned operating model to function from its first day of reduced scope — production to continue where it must continue, know-how to survive the transition to wherever it needs to survive, and the entity's relationship with its remaining workforce to emerge intact rather than damaged. Procedural compliance is the legal constraint within which that transition must be executed; it is not the transition itself. A foreign parent that treats this chapter as a checklist for lawfully separating employees — without also addressing which employees must be retained through the transition, how their knowledge is captured, and how the process is communicated — will find that legal compliance alone does not protect the enterprise value the downsizing was undertaken to preserve.

Workforce reduction is not the consequence of a successful downsizing. It is one of the instruments by which the new operating model is created. Of the three co-equal pillars addressed in this guide, the labor-law pillar carries the most direct and immediate human consequence, the lowest procedural tolerance for error, and the greatest sensitivity to inconsistency with the corporate and tax positions taken elsewhere in the transaction. A collective dismissal procedure that is technically compliant in isolation can still fail — and expose both the Italian entity and the foreign parent to liability — where the corporate resolution authorizing the reduction, the transfer-pricing documentation characterizing the functional change, and the union consultation communication tell three different stories about why the reduction occurred. It can also fail operationally, notwithstanding perfect legal compliance, where the employees needed to carry the transition through have already left. Coordinating the legal narrative and protecting the operational substance are not two different projects, and an independent CRO operating across governance, tax, and labor from a single factual base is positioned to perform that coordination in a way a fragmented panel of separately retained advisors, each visible only into their own workstream, structurally cannot.

From this point, each section below pairs a short narrative discussion with a compact operational appendix — the appendix states the rule, its citation, and the condition that limits it; the narrative explains why it matters and how it connects to the rest of the transaction. The appendix tags indicate the kind of authority behind each rule: **[BINDING]** for a statutory rule; **[CASSAZIONE]** or **[CJEU]** for a judicial holding, stated with its precise scope; **[PRACTICE STRUCTURE]** for a recommended approach where no binding rule dictates the answer; **[CAUTION]** or **[OPEN ITEM]** for a flagged risk or an unsettled question; **[COMPARATIVE]** for non-binding information about

another jurisdiction. Each appendix closes with the dated record its module should produce; a master index at the end of the chapter collects all of them.

A threshold caveat governs this entire chapter

Italian collective dismissal and transfer-of-undertaking procedure is technically dense, procedurally rigid, and highly fact-sensitive: minor variances in headcount calculation, consultation timing, or selection-criteria documentation routinely determine the difference between a valid dismissal and one exposing the employer to reinstatement or the enhanced indemnity regime.

The sections that follow are written to give the foreign CFO, General Counsel, or HR lead — or an application generating an action plan from this text — the operational structure needed to route a downsizing to the correct procedure and sequence it correctly. They are not, and are not intended to be, a substitute for qualified Italian labor-law counsel retained to execute the procedure. No step described in this chapter should be implemented without independent verification and execution oversight by a *giuslavorista* admitted to practice in Italy.

Procedural failure in this area is not merely financial: it can trigger judicial orders carrying criminal exposure for non-compliance with the order itself, and, in egregious cases, can contribute to personal liability exposure for the individuals directing the process.

5.1 Collective Dismissal Procedure

A downsizing's labor-law treatment turns on scale, and getting that classification wrong at the outset is the single most common way a foreign parent mismanages this pillar. A large employer — averaging 250 or more employees — that closes a site, plant, or autonomous department with at least 50 resulting redundancies falls under a special notice regime requiring 90 days' advance warning to unions and named institutional recipients, *before* the ordinary collective-dismissal machinery even begins; this is easy to miss because it operates as a gate in front of the more familiar Law 223/1991 procedure rather than as part of it, and the Ministry of Labour has confirmed that where several units close together, it applies to the closure as a whole if any single unit alone crosses the 50-redundancy line. Below that scale, the ordinary regime applies wherever an employer exceeding fifteen employees intends at least five dismissals within 120 days in the same production unit or across units in the same province. Below both thresholds, the analysis shifts to individual dismissal for objective justified reason instead — a materially different procedure, addressed alongside the *repêchage* obligation that applies regardless of which regime governs.

Once the ordinary procedure is engaged, it unfolds in two phases. A written communication opens the union consultation phase — to company-level union representatives, or the comparatively representative unions absent those, and simultaneously to the regional labor office — stating the reasons, headcount, professional profiles, timeframe, and proposed selection criteria. This is not paperwork for its own sake: the numbers in this communication should trace directly back to whatever classification exercise determined which roles are terminating, transferring, or remaining, and any daylight between the two is a documented opening for later challenge. This phase runs 45 days, halved to 25 where fewer than ten employees are involved — a trigger tied to the scale of the procedure itself, not the employer's overall size, worth stating plainly since assuming otherwise is a natural but incorrect inference. Where consultation doesn't produce agreement, a second phase follows before whichever authority actually has competence — the Region, if the affected units sit in one region, or the Ministry, if they span more than one — capped at 30 days, or 15 under the same reduced-scale exception.

The perimeter of who gets compared to whom is where a foreign parent's intuition is most likely to be wrong. Cassazione has repeatedly reaffirmed, most recently in an ordinance from early 2026, that the comparison pool must in principle span the entire company, not just the site or department being reduced — a limitation to one unit is permitted only where the employer can show, and states within the union communication itself, objective organizational reasons for confining it there, including why transfer to nearby comparable units wasn't considered. A downsizing plan that quietly assumes the affected function is its own natural comparison pool, without that affirmative showing, is exposed to exactly this challenge. Absent a union agreement setting different criteria — which is, practically, the strongest available protection against an individual challenge — the statutory defaults apply cumulatively: family responsibilities, seniority, and technical-organizational need, subject always to a non-discrimination floor that no set of criteria may operate to select a disproportionate share of female employees.

One further wrinkle deserves a precise statement rather than a loose one, because its scope is easy to overstate. A 2026 CJEU ruling held that a termination following an employee's refusal of a unilateral workplace relocation, within a collective mobility scheme, counts toward the threshold — but that holding is specific to relocation refusal, not a general rule that any material change in working conditions aggregates toward the count, and it shouldn't be relied on for that broader proposition. On conclusion of the procedure, dismissal notices go out in writing, subject to statutory notice periods, with a report on how the criteria were applied due to the authority and unions within seven days — and the dismissals themselves must complete within 120 days of the procedure's conclusion, unless the union agreement says otherwise.

OPERATIONAL APPENDIX — Collective Dismissal Procedure

[BINDING — Art. 1, commi 224-225, L. 234/2021] *Status: current, Aug 2026.*

Trigger: ≥250 avg. employees (incl. apprentices/*dirigenti*); definitive closure of a site/plant/branch/department; ≥50 resulting redundancies. **Rule:** 90-day written notice to unions and named institutional recipients, before the ordinary procedure below begins. **Multi-site:** applies to a simultaneous multi-unit closure as a whole if any one unit alone reaches 50 redundancies (Interpello 1/2025).

[BINDING — Art. 24, L. 223/1991]

Trigger: employer >15 employees; ≥5 dismissals/120 days, same unit or province. **Rule:** procedure below applies.

[BINDING — Art. 10, L. 604/1966]

Trigger: below both thresholds above. **Rule:** individual dismissal for objective justified reason governs; the *repêchage* obligation applies regardless of regime.

[GUIDE NOTE — unresolved scope flag]

Dirigenti count toward the thresholds above but sit under a distinct consultation and remedy framework — flag any affected executive roles for separate analysis.

[BINDING — Art. 4, co. 2-6, L. 223/1991] *Status: current, Aug 2026.*

Rule: written communication to RSU/RSA (or representative unions) and the regional labor office; states reasons, headcount/profiles, timeframe, proposed criteria — traceable to the underlying diagnostic classification. **Duration:** 45 days.

[BINDING — Art. 4, co. 8, L. 223/1991]

Exception: 25 days, where fewer than ten employees are involved in the procedure — trigger is the procedure's headcount, not the employer's total size.

[BINDING — Art. 4, co. 7, L. 223/1991]

Trigger: no agreement in the union phase. **Rule:** second phase, 30 days (15 under the <10 exception). **Competent authority:** Region (single-region units) or Ministry (multi-region units) — confirm before filing; the wrong body does not toll the clock.

[CASSAZIONE — ord. n. 11380/2026, Sez. Lav.] *Status: current, reaffirmed line of authority.*

Default: comparison pool spans the entire company. **Exception:** single-unit limitation only with objective organizational reasons stated and justified inside the Art. 4 communication itself, including why transfer to nearby units wasn't considered.

[BINDING — Art. 5, L. 223/1991]

Default criteria (cumulative, absent union agreement): family responsibilities; seniority; technical-organizational need. **Floor:** no criteria set may select a disproportionate share of female employees, or otherwise select on a protected characteristic.

[CJEU — Case C-907/24, Egenergy, 4 June 2026] *Status: narrowly scoped holding.*

Rule: relocation-refusal termination within a collective mobility scheme counts toward the threshold. **Scope limit:** relocation-refusal only — does not extend to other categories of working-condition change.

[BINDING — Art. 4, co. 9, L. 223/1991; Art. 8, co. 4, L. 236/1993]

Rule: written dismissal notices on conclusion, subject to statutory notice; report to authority/unions within 7 days. Dismissals complete within 120 days of conclusion, unless the union agreement states otherwise.

Evidentiary output — record produced by this module

Screening determination, dated, with the regime selected and basis recorded.

If Legge 234/2021 applies: the 90-day notice, dated, to all required recipients.

The Art. 4 communication, with headcount/profile data traceable to the underlying diagnostic classification.

If the selection pool is limited: the organizational-autonomy justification, stated within the communication itself.

Record of which competent authority (Region or Ministry) received the administrative-phase filing, and why.

The Art. 4(9) report, dated within 7 days of dismissal notices.

5.2 Phased / “Rolling Closure” Methodology

Because a downsizing runs against a continuing entity rather than a single terminal event, foreign parents often favor a phased or rolling implementation — reducing headcount in tranches tied to commercial milestones or the phased transfer of assets and functions — over one concentrated reduction. This carries a risk with no counterpart in a full closure: dismissals in successive tranches within the same 120-day window, attributable to the same underlying cause, aggregate for threshold purposes, so a sequence of individually sub-threshold

reductions can retroactively become an unlawful collective dismissal conducted outside the proper procedure if that aggregation wasn't anticipated from the outset.

The opposite structuring temptation carries its own risk. Deliberately spacing a phased reduction across multiple non-overlapping 120-day windows, specifically to avoid collective-dismissal treatment altogether, invites exactly the judicial scrutiny of underlying unity of cause that such structuring is meant to escape — and a reorganization plan documented as a single decision, whether in board resolutions or transfer-pricing documentation prepared elsewhere in the transaction, builds a substantial evidentiary record working against any later claim that the tranches were procedurally unrelated. The phased methodology is legitimate and often commercially necessary; it is not a threshold-avoidance mechanism, and the discipline that keeps it legitimate is reviewing the full multi-year timeline as one plan before the first union communication is issued, rather than justifying each tranche in isolation as it comes up.

OPERATIONAL APPENDIX — Phased / Rolling Closure

[BINDING — aggregation rule, Art. 24, L. 223/1991]

Rule: dismissals in successive tranches within the same 120-day window, attributable to the same cause, aggregate for threshold purposes. **Consequence:** individually sub-threshold tranches can retroactively constitute an unlawful collective dismissal if unplanned.

[CAUTION — threshold-avoidance structuring]

Risk: deliberately spanning non-overlapping 120-day windows to avoid collective-dismissal treatment invites scrutiny of unity of cause. **Evidentiary risk:** a single-decision paper trail (board resolutions, transfer-pricing documentation) undermines a later claim that tranches are procedurally unrelated.

[PRACTICE STRUCTURE]

Recommendation: review the full multi-year phasing plan as one document, against labor counsel, before the first Art. 4 communication is issued — not tranche by tranche.

Evidentiary output — record produced by this module

The full multi-year phasing plan, reviewed as a single document before the first tranche's Art. 4 communication.

Documented aggregation analysis for every tranche falling within a shared 120-day window.

5.3 Wage Supplementation as an Alternative to Redundancy

Where a reduction in demand for a function may be temporary, or where a phased reduction creates an interval of excess headcount without yet warranting permanent separation, Italian wage-supplementation mechanisms let employees be suspended or work reduced hours, with the state covering a substantial part of lost wages, rather than being dismissed outright. Which specific mechanism applies is not something to assume by default: it depends on a sequence — the employer's sector, whether ordinary wage supplementation (CIGO) covers a temporary cause, whether a bilateral or territorial solidarity fund covers the employer instead, the average headcount over the preceding six months, and the qualifying cause itself. An employer outside CIGS's own sectoral or size coverage — common for a foreign-owned services, commercial, or smaller manufacturing entity — falls instead within the *Fondo di Integrazione Salariale* (FIS), a comparable but distinct mechanism with its

own eligibility rules and ceilings. Running this screening sequence properly, rather than assuming CIGS applies because it's the best-known mechanism, is the first step, and the general architecture described here should be confirmed against current INPS circolari for the specific entity before being relied on.

Where a CIGS program for reorganization or crisis has already been exhausted and some redundancy risk remains, employers exceeding fifteen employees can negotiate a further twelve months of wage supplementation during the union consultation, in exchange for concrete redeployment or reoccupation measures and enrollment in the national employability program — a genuine value-preservation tool worth evaluating alongside the retention structures discussed below, not a formality. Solidarity contracts offer a related alternative: the workforce collectively accepts reduced hours, with the state subsidizing part of the loss, in exchange for avoiding or narrowing the scope of redundancies — useful where the goal is preserving the workforce's collective skill base through a temporary downturn rather than shedding headcount permanently.

None of these mechanisms tolerates a plan that misrepresents its own premise. Access depends on a reorganization or crisis plan that INPS and the Ministry treat as a substantive condition, not a formality — and where that plan represents a viable path back to normal operation while headquarters has, in substance, already decided on permanent elimination, the plan's factual premise is false the moment it's filed. The general criminal framework governing false declarations made to obtain public disbursements is well established for cases involving falsely reported wage-supplementation *payments*; this guide has not identified a reported decision addressing the more specific fact pattern of a reorganization plan misrepresenting its own permanence, so that exposure should be treated as an identified risk rather than a settled precedent — which does not make it safe to ignore. The plan filed should reflect the Group's actual intent, coordinated with the underlying diagnostic classification, so it is a premise the Group can stand behind rather than one built to be dismantled later.

OPERATIONAL APPENDIX — Wage Supplementation

[BINDING — CIGS, D.Lgs. 148/2015] *Status: general architecture current; confirm exact coverage against current INPS circolari before relying on this for a specific entity.*

Rule: wage supplementation for suspended/reduced-hours employees, principally for reorganization or crisis causes, subject to sector/size coverage. **Screening sequence (in order):** sector → CIGO coverage → bilateral/territorial fund coverage → 6-month average headcount → qualifying cause. **Fallback:** FIS, for employers outside CIGS's sectoral/size coverage.

[BINDING — Art. 22-ter, D.Lgs. 148/2015] *Status: current, Aug 2026; verified.*

Rule: where CIGS for reorganization/crisis is exhausted and redundancy risk persists, employers >15 employees may negotiate an *accordo di transizione occupazionale* during Art. 24 consultation — 12 further months of supplementation, tied to redeployment measures and GOL enrollment.

[PRACTICE STRUCTURE — solidarity contracts]

Rule: workforce collectively accepts reduced hours; state subsidizes part of the wage loss; used to avoid or narrow redundancy scope while preserving collective skill base.

[CAUTION — reorganization-plan credibility]

Risk: CIGS/FIS/solidarity access depends on a plan INPS and the Ministry treat as substantive, not formal. A plan representing viable recovery while permanent elimination is already decided is false at filing. **Legal framework, not a confirmed holding on this fact pattern:** Arts. 316-ter and 640-bis c.p. are established for

false *payment* declarations to INPS; no confirmed decision addresses a misrepresented-permanence reorganization plan specifically — treat as an identified risk, not settled precedent.

Evidentiary output — record produced by this module

The coverage-screening sequence, dated, showing which regime (CIGS / FIS / CIGO) applies and why.

The underlying reorganization or crisis plan, reflecting the Group's genuine operational intent as of filing.

If used: the *accordo di transizione occupazionale* terms and GOL enrollment status.

5.4 Transfer of Undertaking Where a Function Survives Under a Different Entity

Where a function is properly characterized as a going branch of the business (*ramo d'azienda*) transferring to another Group entity or a third party, the employees assigned to it pass to the transferee automatically, by operation of law — retaining accrued seniority and all economic and normative rights, without needing and without being defeatable by individual consent. This forecloses a commercially tempting but legally unavailable structure: a foreign parent cannot terminate the workforce attached to a divested function and let the transferee hire selectively, for any function meeting the branch characterization. The transferor and transferee also remain jointly liable for employment-related claims accrued at the time of transfer, including unpaid severance accrual (TFR) — which does not simply move with the employees as a bookkeeping matter but remains a live claim against the transferor entity after the transfer completes, unless and until the employee executes a specific waiver in a protected venue. Whatever the transfer agreement says between the parties commercially, this continuing joint exposure needs to be allocated explicitly rather than assumed away.

Employees within the transferring branch cannot be selectively excluded from the transfer, but the rule on changing their duties is narrower than it might first appear. Where a genuine organizational change affects the employee's position, the employer can unilaterally assign duties one level down, within the same legal category, without needing an individually executed protected-venue agreement — it's only broader demotions, beyond one level or outside the same category, that require that formality. What actually transfers is itself a live question, not a formality: the underlying EU directive and its interpretive case law require that what transfers retain its identity as an autonomous, organized economic entity for the automatic-continuity rule to apply at all, and a transfer structured to divest assets while quietly keeping the organizational core with the transferor — or one that splits a genuinely unified function across multiple recipients to dilute headcount pickup — risks recharacterization on economic substance regardless of its form. Any structure separating functional assets from functional personnel should be tested against that criterion before implementation, not defended against a challenge after the fact.

The information-and-consultation obligation that runs alongside the transfer is grounded in a companion statute to the Civil Code provision, not the provision itself — a distinction that matters because the two carry different thresholds and mechanics. Where more than fifteen employees are collectively occupied, transferor and transferee must jointly notify the union representatives in writing at least 25 days before the transfer instrument is perfected, stating the date, reasons, and legal, economic, and social consequences for employees; a joint examination opens on request within 7 days, and is deemed exhausted after 10 days if no agreement follows, at which point the parties regain freedom of action. Three further points are easy to omit and shouldn't

be: continuity or possible replacement of the applicable collective bargaining agreement; the employee's own right to resign with just-cause termination effects where the transfer produces a substantial change in working conditions; and a distinct, more permissive set of rules for transfers occurring within an insolvency or crisis procedure, which sits outside the scope of the ordinary rule stated here and needs separate analysis.

OPERATIONAL APPENDIX — Transfer of Undertaking

[BINDING — Art. 2112, co. 1, c.c.] *Status: current, Aug 2026.*

Rule: a properly characterized *ramo d'azienda* transfers with automatic employee continuity — accrued seniority, economic, and normative rights preserved, without requiring or being defeatable by individual consent.

[BINDING — Art. 2112, co. 2, c.c.]

Rule: transferor and transferee are jointly and severally liable for employment claims accrued at transfer, including unpaid TFR. **Consequence:** TFR remains a live claim against the transferor after transfer, absent a protected-venue waiver.

[BINDING — Art. 2103 c.c., as amended by D.Lgs. 81/2015] *Status: current, Aug 2026; corrected from a prior overstated draft.*

Rule: no cherry-picking of employees out of a transferring branch. **On duties:** a one-level-down reassignment within the same legal category, justified by a genuine organizational change, may be unilateral — broader demotions require an individually executed protected-venue agreement under Art. 2113 c.c.

[CJEU — Süzen line of authority, EU Directive 2001/23/EC]

Rule: what transfers must retain its identity as an autonomous, organized economic entity. **Risk:** structures dividing functional assets from personnel, or fragmenting a unified function across recipients, risk recharacterization on economic substance.

[BINDING — Art. 47, L. 428/1990] *Status: current, Aug 2026; corrected citation — the obligation sits here, not in Art. 2112 c.c. itself.*

Trigger: >15 employees collectively occupied. **Rule:** joint written notice ≥25 days before the transfer instrument is perfected (or binding agreement, if earlier), stating date/reasons/consequences. **Consultation window:** joint examination on request within 7 days; deemed exhausted after 10 days without agreement.

[GUIDE NOTE — points not to omit]

Continuity/replacement of the applicable collective bargaining agreement; the employee's Art. 2112 c.c. right to resign with just-cause effects on substantial change to working conditions; distinct, more permissive rules for insolvency/crisis-procedure transfers (separate analysis required).

[COMPARATIVE — UK TUPE Regulations 2006]

Implements the same EU directive with a materially similar automatic-transfer and consultation regime; the main divergence from the Italian position is the collective-dismissal threshold and procedure, not the transfer mechanic itself. Informational only.

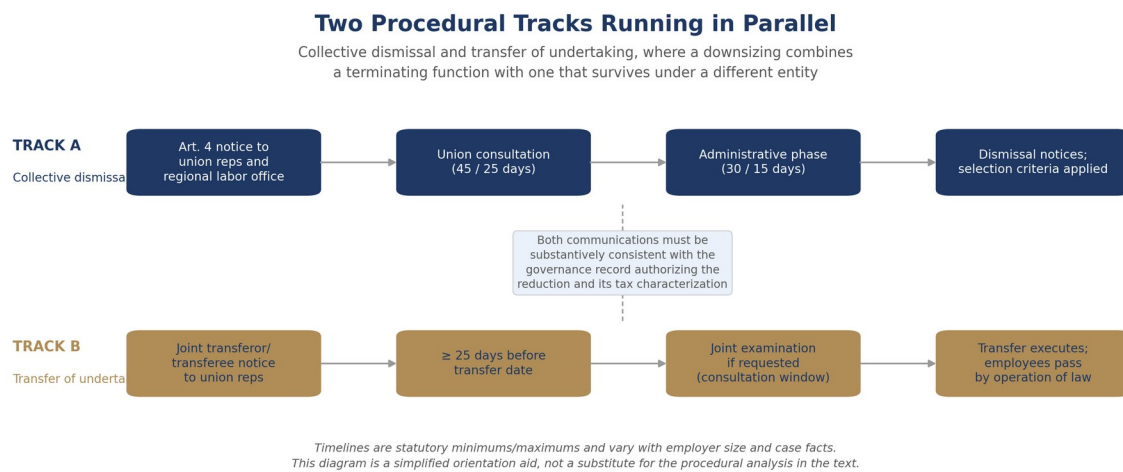


Figure 5.1 — The collective-dismissal and transfer-of-undertaking tracks run in parallel and must be sequenced and documented consistently.

Evidentiary output — record produced by this module

The autonomous-economic-entity assessment for the transferring function, tested against the Süzen criterion before implementation.

Allocation, as between transferor and transferee, of joint TFR and employment-claim liability.

For any unilateral duty reassignment: written communication confirming the change stays within one level and the same legal category.

The Art. 47, L. 428/1990 notice, dated, with confirmation of the 25-day minimum and the consultation-window outcome.

Continuity/replacement position on the applicable collective bargaining agreement, stated in the transfer documentation.

5.5 Retention, Knowledge Transfer, and Individual Exit Settlements

The employees most needed to complete a transition are often the first to leave once it's announced, which makes this the narrowest and most time-sensitive problem in the chapter. The starting point is identifying which employees are critical to the transition period specifically — a category distinct from, and not always identical to, which roles are critical to the function's ongoing operation. A role terminating under the new operating model can still be essential for a six- to twelve-month handover window during which a receiving site is trained and documentation transferred, and that distinction should produce its own roster, maintained separately from the general headcount-reduction plan.

Retaining those employees through the window typically means combining a completion bonus tied to handover milestones rather than a fixed date, a retention agreement with a minimum service period drafted to survive a subsequent dismissal notice for the same individual, or a temporary secondment to a Group entity where the receiving site is itself part of the Group. None of these is risk-free on the tax side — a completion bonus tied to a subsequent termination needs careful drafting to avoid being recharacterized as disguised severance with different tax treatment, and this guide doesn't offer a bright-line test for that distinction; it

needs confirming with local counsel and tax advisors before execution. The knowledge-transfer work itself deserves the same discipline as the legal procedure, not an afterthought to it: documented as its own workstream, running in parallel with the dismissal and transfer procedures rather than after them, with a defined overlap period and structured technical documentation. The failure this guards against isn't procedural — it's employees leaving, by dismissal or resignation, before what they know has actually been captured, which no amount of legal compliance elsewhere in the chapter will cure.

Where an employee's eventual exit is individually settled rather than swept into a collective procedure, finality depends on where the settlement is signed, not just what it says. A waiver of statutory employment rights remains voidable by the employee for six months — from termination, if signed during employment, or from the settlement itself, if signed after — unless it's concluded in a protected venue: the territorial labor inspectorate, a certified union, or an accredited conciliation body. Generic full-and-final language doesn't survive this scrutiny either; the protected venue only does its job for specific, identifiable claims. A separate and independent question is whether an ex-gratia termination payment qualifies for more favorable separate taxation rather than ordinary marginal rates — that treatment turns on the character of the payment itself, not on where the settlement was signed, and the two questions should be confirmed on their own terms rather than assumed to travel together.

OPERATIONAL APPENDIX — Retention, Knowledge Transfer, and Settlements

[PRACTICE STRUCTURE — identifying transition-critical roles]

Input: the diagnostic-stage classification of specialized workforce capability. **Action:** tag which employees are critical to the *transition period* specifically, distinct from ongoing-operation criticality. **Output:** a transition-critical roster, kept separate from the general headcount plan.

[PRACTICE STRUCTURE — retention structures]

Structure 1: completion/transition bonus, paid on milestone completion rather than a fixed date. **Structure 2:** retention agreement with a minimum service period, drafted to survive a subsequent dismissal notice. **Structure 3:** temporary secondment to a Group entity, which can engage the extra-corporate *repêchage* considerations discussed below.

[CAUTION — characterization risk]

Risk: a completion bonus tied to subsequent termination risks recharacterization as disguised severance with different tax treatment. No bright-line test is stated here — confirm with local counsel and tax advisors before executing.

[PRACTICE STRUCTURE — knowledge-transfer workstream]

Rule: document as a discrete workstream, sequenced in parallel with — not after — dismissal/transfer procedures: SOP documentation; defined overlap/training period; structured know-how transfer where the receiving site is outside Italy.

[BINDING — Art. 2113 c.c.] *Status: current, Aug 2026; corrected from a prior draft (previously stated as 60 days).*

Rule: a waiver/settlement of statutory rights is voidable within six months — from termination if signed during employment, or from the act itself if signed after — unless concluded in a protected venue (territorial labor inspectorate, certified union, or accredited conciliation body, Art. 411 c.p.c.). **Scope:** requires specific, identifiable claims — generic “full and final” language remains vulnerable regardless of venue.

[BINDING — Arts. 17 and 19 TUIR] *Status: current, Aug 2026; causal link to protected venue corrected from a prior draft.*

Rule: an *incentivo all'esodo* may qualify for separate taxation rather than marginal IRPEF rates. **Correction:** this treatment derives from the character of the payment itself, not from execution in a protected venue — the venue gives the waiver finality; it does not itself create the tax treatment. Confirm each independently.

Evidentiary output — record produced by this module

Transition-critical roster, dated.

Retention agreements/completion-bonus terms, with characterization review noted.

Knowledge-transfer workstream plan and milestone sign-off.

For each individually settled exit: protected-venue execution record; specific-claims language confirmed; separate-taxation qualification assessed independently of venue.

5.6 Individual Repêchage and Group-Wide Extension

Before dismissing an employee for objective, organizational reasons, an employer must verify there's no alternative comparable position the employee could fill instead — including, with the employee's consent, a role at a lower level or lower pay. This is a distinct doctrine from the selection-pool comparison that governs collective dismissals discussed earlier in this chapter, and the two shouldn't be merged: one asks which individual roles must be considered before a single dismissal; the other asks which employees must be compared against each other once a collective procedure is underway.

Whether this individual obligation reaches beyond the contractual employer to other companies in the same Group is the point where an earlier version of this guide overstated the law, and it's worth being precise about the correction. Group membership, parent control, or the exercise of centralized direction over an Italian subsidiary does not, by itself, extend one company's employment obligations to another. Extension to other Italian Group entities is exceptional and generally requires facts supporting a single centre of attribution of the employment relationship, or something closer to co-employment — not the mere fact of common ownership or centralized management. Where those facts are genuinely present, a documented, dated audit of vacant Group positions remains the safer practice; the mistake is assuming the obligation to conduct one follows automatically from the parent's degree of control, which it doesn't. Whether the same obligation reaches remote or hybrid roles, or vacancies at Group entities outside Italy, is a genuinely unsettled question in current Italian jurisprudence rather than one this guide is positioned to resolve — a foreign parent for whom that question is operationally live should take it directly to Italian labor counsel rather than infer an answer from the domestic rule stated here.

OPERATIONAL APPENDIX — Individual Repêchage and Group-Wide Extension

[BINDING — *obbligo di repêchage*, individual dismissal]

Rule: before an objective-reason dismissal, the employer must verify the absence of an alternative comparable position, including a lower-level/lower-pay role with employee consent. **Distinct from:** the collective-dismissal selection-pool doctrine — related but not to be merged.

[CASSAZIONE — extra-corporate extension — corrected framing] *Status: current, Aug 2026; scope narrowed from a prior overstated draft.*

General rule: group membership, parent control, or *direzione e coordinamento* does not, by itself, extend one company's employment obligations to another. **Exception:** extension is exceptional, requiring facts supporting a single centre of attribution or co-employment — not mere common ownership. **Practice point:** where those facts are present, a documented, dated audit of Group vacancies remains the safer course, but the audit obligation should not be assumed automatically from group structure alone.

[OPEN ITEM — remote, hybrid, and cross-border roles]

Status: genuinely unsettled in current Italian jurisprudence; this guide takes no position on it. **Practical note:** raise directly with Italian labor counsel where operationally relevant, rather than inferring from the domestic rule above.

Evidentiary output — record produced by this module

For each individual dismissal: documented verification of the absence of an alternative comparable position, including any lower-level/compensation offer.

Where extra-corporate extension is asserted or contested: the specific facts supporting single-centre-of-attribution or co-employment, not merely group membership.

Where conducted as practice: a dated audit of Group vacancies, prepared before the relevant communication is issued.

5.7 Union Relations and Business Continuity

A downsizing reads as selective in a way a full closure doesn't — a judgment about which functions or sites were deemed expendable — and union representatives have both the incentive and the procedural standing to contest not just the numbers and criteria but the underlying rationale for why a particular function was chosen. A tax or functional characterization prepared elsewhere in the transaction that understates a divested function's strategic importance can end up introduced by union counsel as evidence undermining the employer's own stated rationale, which is why the union consultation communication needs to be drafted with an eye to consistency with the governance and tax positions taken elsewhere, not treated as a self-contained document owned by local employment counsel alone.

The right to strike is constitutionally protected, and industrial action during a contested consultation period, while not universal, is a recognized feature of Italian labor relations in sectors with real union density — manufacturing especially. Where production continuity, delivery commitments, or a knowledge-transfer window are time-sensitive, a basic business-continuity assessment covering the operational and customer-facing consequences of a work stoppage during the consultation window is worth preparing alongside the consultation communication itself, rather than improvised after the fact if action actually occurs.

OPERATIONAL APPENDIX — Union Relations and Business Continuity

[PRACTICE STRUCTURE — cross-workstream consistency]

Risk: union counsel can use a tax/functional characterization prepared elsewhere to contest the stated organizational rationale. **Rule of practice:** the consultation communication should be substantively consistent with the governance and tax positions taken elsewhere in the transaction.

[BINDING — Art. 40 Cost.]

Rule: the right to strike is constitutionally protected; industrial action during consultation is a recognized risk in union-dense sectors. **Recommendation:** prepare a business-continuity assessment alongside the consultation communication where operational continuity is time-sensitive.

Evidentiary output — record produced by this module

A documented cross-check confirming the union communication is substantively consistent with the governance and tax positions taken elsewhere in the transaction.

A business-continuity assessment for the consultation window, prepared in advance where operational continuity is time-sensitive.

5.8 Comparative Note: Thresholds and Redeployment Regimes

A foreign parent accustomed to French, German, or US procedure shouldn't assume Italy's thresholds or obligations look the same. France's *plan de sauvegarde de l'emploi* applies at fifty employees and ten dismissals over thirty days, and — unlike Italy — imposes substantive redeployment and outplacement obligations subject to potential administrative approval. Germany's works council holds co-determination rights extending well past notification-and-consultation. The US WARN Act is purely procedural: sixty days' notice, with none of the ongoing consultation, selection-criteria discipline, or *repêchage* obligation central to the Italian regime. What actually matters operationally is that Italy's threshold — five dismissals within 120 days, above fifteen employees — is markedly lower than the French or US triggers, so collective-dismissal treatment arrives sooner than a foreign HQ used to those regimes typically expects, and a reduction executable in weeks elsewhere in Europe or the US routinely needs several months in Italy once consultation phases and any *repêchage* documentation are properly sequenced.

OPERATIONAL APPENDIX — Comparative Note

[COMPARATIVE — informational only — not binding on an Italian downsizing]

France: PSE applies at ≥ 50 employees / ≥ 10 dismissals over 30 days; substantive redeployment/outplacement obligations, potential administrative homologation. **Germany:** *Betriebsrat* co-determination under the *Betriebsverfassungsgesetz*, exceeding notification-and-consultation. **United States:** WARN Act — 60-day procedural notice only, no consultation/selection/*repêchage* analogue. **Operational takeaway:** Italy's threshold (5/120 days, >15 employees) is markedly lower — budget more time than these comparators would suggest.

5.9 What the Record Must Show — Master Evidentiary Index

The following consolidates the evidentiary output of every section above into a single index. Each item should exist, dated and documented, before this chapter's compliance is tested rather than assembled in response to a challenge.

§5.9 — Master evidentiary index

§5.1 Collective dismissal: screening determination; 90-day L. 234/2021 notice if triggered; Art. 4 communication

traceable to the diagnostic classification; organizational-autonomy justification if the selection pool is limited; record of the competent administrative authority; the Art. 4(9) report.

§5.2 Phased closure: the full multi-year phasing plan reviewed as one document; aggregation analysis for tranches sharing a 120-day window.

§5.3 Wage supplementation: the coverage-screening sequence; the reorganization or crisis plan reflecting genuine intent; any *accordo di transizione occupazionale* terms and GOL enrollment.

§5.4 Transfer of undertaking: the Süzen autonomous-economic-entity assessment; TFR/joint-liability allocation; written confirmation of any unilateral duty reassignment's scope; the Art. 47, L. 428/1990 notice and consultation-window outcome; the collective-bargaining-agreement continuity position.

§5.5 Retention and settlements: the transition-critical roster; retention-structure characterization review; the knowledge-transfer workstream plan; protected-venue execution and specific-claims language for each individual settlement; separate-taxation qualification assessed independently of venue.

§5.6 Repêchage: documented verification of alternative-position search for each individual dismissal; the specific facts supporting any extra-corporate extension asserted; any group vacancy audit conducted.

§5.7 Union relations: the cross-pillar consistency check; the business-continuity assessment for the consultation window.

Why This Matters to a Foreign Parent

The legal mechanics addressed above are a necessary constraint on the workforce transition, not its substance. Retention, knowledge-transfer, and settlement discipline sit at the center of a successful downsizing because legal compliance alone does not preserve the enterprise value a downsizing is undertaken to protect — an operating model can be legally correctly wound down and still fail operationally, if the employees needed to carry the transition through have already left before their knowledge was captured.

A collective dismissal procedure that is technically compliant in isolation can still expose both the Italian entity and the foreign parent to liability where the corporate governance record, the tax characterization of the functional change, and the union consultation communication tell three different stories about why the reduction occurred. Coordinating that narrative and protecting the operational substance are the specific functions an independent CRO, operating across governance, tax, and labor from a single factual base, is positioned to perform in a way a fragmented panel of separately retained advisors structurally cannot.

This chapter is an operational map, not an execution manual

Every rule, threshold, and procedural step above requires verification against the specific facts of the Italian entity's workforce, collective bargaining coverage, and regional practice by qualified Italian labor counsel before implementation.

No communication to trade unions or affected employees should be issued without that counsel's direct involvement in its drafting.

The chapter that follows turns to the cross-cutting liability thread this chapter has referenced repeatedly, examining how governance, tax, and labor exposures — including the specific exposures identified in the

transfer-of-undertaking, retention, and repêchage sections above — combine to create the stratified liability framework an independent CRO is engaged to manage.

Chapter 6

Liability: The Cross-Cutting Thread

Each section pairs a narrative discussion with a compact operational appendix

6.0 Introduction to the Chapter

Chapters 3 through 5 examined the corporate governance, tax, and labor mechanics of an Italian downsizing as three co-equal analytical pillars. None of those chapters can be read as self-contained compliance checklists. Every governance resolution, every transfer-pricing position, and every collective-dismissal step carries a liability dimension that does not respect pillar boundaries. Whether a board resolution reflects the Italian entity's own independent evaluation of a group-directed transaction, or merely ratifies a decision made elsewhere, is a question that reaches into Article 2497 of the Civil Code regardless of how cleanly the resolution itself is drafted. A transfer-pricing study documenting arm's-length compensation for a divested function does not, by itself, foreclose a criminal reading of the same transaction if the divestment occurred once the Italian entity was already in distress. A collective dismissal procedure executed to the letter of Law 223/1991 does not insulate directors from liability if the underlying business decision aggravated, rather than addressed, the entity's financial distress.

This chapter consolidates that exposure into a single stratified framework, organized around one governing principle: **liability in the Italian system is judged retrospectively, but it is created prospectively**. No liquidatore, curatore, tax inspector, or public prosecutor evaluates a downsizing as it unfolds. Each reconstructs it later — often years later, once the Italian entity has entered liquidazione giudiziale, once a tax audit has been opened, or once a criminal referral has been made — using the record the directors, the parent, and their advisors created at the time, together with whatever else the reconstruction turns up: correspondence, witness accounts, accounting entries, and the entity's conduct afterward. The five layers described in Section 6.1 differ in trigger, claimant, and consequence, but each asks substantially the same question — what the decision-makers knew, when they knew it, and what they did about it — and in each, a genuine and dated contemporaneous record is the strongest evidence available to answer it, even where it is not the only evidence a court will consider.

From this point, each section below pairs a short narrative discussion with a compact operational appendix — the appendix states the rule, its citation, and the condition that limits or scopes it; the narrative explains why it matters and how it connects to the rest of the transaction. The appendix tags indicate the kind of authority behind each rule: [BINDING] for a statutory rule; [CASSAZIONE] for a judicial holding, stated with its precise scope; [PRACTICE STRUCTURE] for a recommended approach where no binding rule dictates the answer; [CAUTION] or [OPEN ITEM] for a flagged risk, a common misreading, or an unsettled question; [COMPARATIVE] for non-binding information about another jurisdiction. Each appendix closes with the dated record its module should produce; a master index at the end of the chapter, Section 6.6, collects all of them.

A threshold caveat governs this entire chapter

Italian director, insolvency, and criminal liability doctrine is dense, fact-intensive, and frequently counter-

intuitive to a foreign board: whether a duty was breached, whether damage is compensated by an offsetting group benefit, and whether a transfer was adequately compensated are all questions that turn on facts developed after the event, assessed against a legal standard that does not reduce to a fixed checklist.

The sections that follow are written to give the foreign CFO, General Counsel, or Operating Partner — or an application generating an action plan from this text — the operational structure needed to recognize where liability risk concentrates in a downsizing and what record answers it. They are not, and are not intended to be, a substitute for qualified Italian corporate, insolvency, and criminal counsel. No decision bearing on the Italian entity's solvency, on an intra-group asset or function transfer, or on engagement with the *Composizione Negoziata della Crisi* should be taken without that counsel's direct, contemporaneous involvement.

Several propositions in this chapter were corrected during external legal review before publication — most significantly the precise scope of the Article 2497 presumption, the conditions of the *Composizione Negoziata*'s exemption from bankruptcy offenses, and the boundaries of the Modello 231 predicate-offense catalogue relevant to a downsizing. Where this chapter states a rule with a scoping condition attached, that condition is not a stylistic hedge; it is frequently the difference between a defensible position and an indefensible one.

6.1 The Stratified Framework: Five Layers of Exposure

Liability arising from an Italian downsizing is not a single risk but a stratified set of five distinct legal regimes, each with its own trigger, its own plaintiff or prosecuting authority, and its own evidentiary standard. Treating them as interchangeable — or assuming that compliance with one forecloses exposure under another — is among the most consequential errors a foreign parent can make in structuring a downsizing.

The first, and logically prior, layer is the duty of adequate organizational structure under **Article 2086, paragraph 2, of the Civil Code**. Before any question of what directors did once distress had arisen, Italian law asks a more basic question: did the entity maintain an organizational, administrative, and accounting structure adequate — proportionate to the entity's nature and size — to detect crisis in time, and did the directors act without delay once crisis indicators appeared. This is a continuously owed duty rather than one that activates only once distress is evident, and its breach does not stand alone as an independent damages claim; it typically feeds a subsequent Article 2486 action, or supports a judicial petition for serious irregularities under Article 2409 c.c. The Circolare CCII Parte I of 16 July 2026 confirms that mere passive monitoring of a crisis condition, without prompt activation of the remedies available under the system, does not satisfy this duty, and that the administrative body's inertia — where it materially compromises the prospects of an orderly resolution — can itself constitute a breach of Article 2086. For a foreign-parented Italian subsidiary, a detection and reporting infrastructure that is only built once a downsizing decision has already been made is a genuine risk factor under this duty, though whether it in fact breaches Article 2086 depends on what the entity's pre-existing arrangements actually were — this is a question of fact, not a foregone conclusion.

The second, sequential layer is **Article 2486 c.c.**, which governs conduct once a cause of dissolution under Article 2484 c.c. has actually arisen — not merely once continuity is, in some general sense, in question. From that

point, directors are confined to acts aimed at preserving the integrity and value of the company's assets. Continued trading is not automatically unlawful, and further losses are not automatically a personal liability: what Article 2486 requires is non-conservative conduct, resulting damage, and a causal link between the two, and its third paragraph supplies presumptive criteria for quantifying that damage where more specific proof is unavailable. The relationship to Article 2086 is sequential rather than parallel: 2086 asks whether the structure existed to detect the triggering moment; 2486 asks what was done once it arrived.

The third layer is **insolvency-law exposure under the Codice della Crisi d'Impresa e dell'Insolvenza** (D.Lgs. 14/2019, as amended by the Correttivo-bis and Correttivo-ter), triggered independently of Articles 2086 and 2486 and reaching transactions that disadvantage the general body of creditors ahead of a subsequent liquidazione giudiziale — the ground on which an asset or function transfer to a group entity is tested against the creditor class as a whole, independent of whether the same transfer was separately defensible on transfer-pricing grounds.

The fourth layer is **tax liability under Article 36 of D.P.R. 602/1973**, a personal-liability regime considerably narrower than its popular characterization as liability for "unpaid taxes." It attaches, first, to liquidators (and, in specified circumstances, to directors who acted as de facto liquidators in the two tax periods preceding liquidation and either carried out liquidation operations or concealed corporate assets) who fail to pay income taxes owed for the liquidation period and earlier periods because they satisfied lower-ranking creditors first or distributed assets to shareholders without first satisfying the tax claim; and, second, separately and subsidiarily, to shareholders who received such a distribution, up to the value received. Liability under Article 36 excludes penalties (sanzioni), attaches only to income taxes, and is capped at the amount of tax credits that would have found coverage under the applicable creditor ranking — a materially narrower exposure than a general "unpaid taxes" formulation suggests, though no less real for directors who move too quickly to satisfy group-favorable creditors.

The fifth layer is **criminal liability under Articles 322 and 323 of the CCII** — fraudulent bankruptcy (Art. 322, comma 1), preferential bankruptcy (Art. 322, comma 3), and simple bankruptcy (Art. 323) — which the Cassazione has confirmed stand in full normative continuity with Articles 216 and 217 of the former Bankruptcy Law (R.D. 267/1942; Cass. pen. n. 33810/2023), such that the substantial body of case law developed under the older numbering remains directly applicable. The most consequential offense in this layer for a downsizing is fraudulent bankruptcy for asset diversion (bancarotta fraudolenta per distrazione) under Article 322, comma 1. The Cassazione has confirmed, in a case concerning an amministratore di fatto who transferred a company's employees to another enterprise without adequate consideration, that goodwill, employment relationships, and technology are economically appreciable "beni" capable of forming the object of fraudulent diversion where transferred without adequate consideration (Cass. pen. n. 3233/2026). Adequacy of consideration is, notably, the same question a transfer-pricing study is built to answer, though from a different vantage point: an OECD Chapter IX-compliant valuation is material evidence that consideration was adequate, but it does not, on its own, address the timing of the transfer relative to the entity's distress or the transferor's intent — both of which the criminal inquiry examines independently. A related offense — preferential payment to a favored group or trade creditor ahead of the Italian tax authority or employees — falls under Article 322, comma 3, and is a recurring pattern this guide flags precisely because it is common, easy to fall into inadvertently during a cash-constrained wind-down, and independently prosecutable.

These five layers do not activate sequentially or mutually exclusively. A single transaction — the transfer of a manufacturing function to a lower-cost group affiliate ahead of a subsequent site closure — can implicate several simultaneously: a breach of Article 2086 if no structure existed to flag the entity's deteriorating position before the transfer was decided; Article 2486 liability if the transfer occurred once a cause of dissolution had already arisen; insolvency-law exposure if it disadvantaged the creditor class; tax liability if group-favorable payments were prioritized over the Italian tax authority; and criminal liability if the compensation received was inadequate. In such a case, the *curatore* appointed on judicial liquidation does not begin the inquiry with the transfer-pricing report. The inquiry begins with whether value was extracted from the subsidiary to the detriment of its then-existing or reasonably foreseeable creditors, and only then turns to whether the price charged can be independently defended — the transfer-pricing documentation answers a valuation question, not, by itself, the liability question the *curatore* asks first.

The diagnostic classification performed in Chapter 2 — surviving-and-transferring, surviving-and-remaining, terminating — remains the factual predicate against which all five layers are tested, and it retains that function long after the downsizing itself has concluded. A *curatore*, a tax inspector, or a prosecutor reconstructing events years later will compare what actually occurred against whatever classification record exists from the time of the decision; the diagnostic performed under Chapter 2's methodology is, in practice, that record. The pillar-specific analyses in Chapters 3 through 5 establish whether the underlying transaction was properly authorized, priced, and executed. This chapter establishes what happens when it was not.

OPERATIONAL APPENDIX — §6.1

- **[BINDING]** Art. 2086, co. 2, c.c. — the duty to maintain an organizational, administrative, and accounting structure adequate to detect crisis in time and to act without delay once detected. — *Condition: adequacy is proportionate to the entity's nature and size (Art. 3, commi 3-4, CCII); breach feeds a subsequent Art. 2486 or Art. 2409 action rather than standing as an autonomous damages claim.*
- **[PRACTICE STRUCTURE]** Passive crisis-monitoring without prompt remedial action can itself breach Art. 2086 (Tribunale di Milano, 18.10.2019, n. 2769, cited in Circolare CCII Parte I of 16.7.2026). — *Condition: fact-specific; late-built monitoring infrastructure is a risk factor, not a per se breach — the pre-existing arrangements must actually be shown to have been inadequate.*
- **[BINDING]** Art. 2486 c.c. — once a cause of dissolution under Art. 2484 c.c. has arisen, directors are confined to conservative management. — *Condition: liability requires non-conservative conduct, damage, and causation — not mere continued trading; Art. 2486, co. 3 supplies presumptive damage-quantification criteria absent more specific proof.*
- **[BINDING]** CCII creditor-disadvantage and clawback provisions (D.Lgs. 14/2019) apply to transactions disadvantaging the creditor class ahead of liquidazione giudiziale. — *Condition: triggered independently of the Art. 2086/2486 duties; the relevant claimant is the curatore or the creditor class.*
- **[BINDING]** Art. 36, D.P.R. 602/1973 — personal liability of liquidators (and, in specified circumstances, directors acting as de facto liquidators) and, subsidiarily, shareholders who received distributions, for unpaid income taxes of the liquidation period and prior periods where

lower-ranking creditors were satisfied first. — *Condition: excludes penalties; capped at the value of tax credits that would have found coverage in the creditor ranking — narrower than a general 'unpaid taxes' formulation.*

- **[BINDING]** Artt. 322(1)/(3) and 323, CCII — fraudulent, preferential, and simple bankruptcy, in full normative continuity with Artt. 216-217, R.D. 267/1942 (Cass. pen. n. 33810/2023). — *Condition: requires a declared liquidazione giudiziale; liability attaches to individuals — administrators, directors, sindaci, liquidators, and amministratori di fatto — not to the entity as such.*
- **[CASSAZIONE]** Cass. pen. n. 3233/2026 — goodwill, employment relationships, and technology are 'beni' capable of fraudulent diversion under Art. 322(1) where transferred without adequate consideration. — *Condition: decided on the facts of an amministratore di fatto's employee transfer; adequacy of consideration is the same question TP documentation addresses, but a compliant valuation does not independently resolve timing or intent.*

Evidentiary output — record produced by this module

- Contemporaneous board minutes recording distress indicators identified and the remedial steps considered at each point.
- Cash-flow forecasts and solvency assessments prepared at each material decision point, not reconstructed afterward.
- The Chapter 2 diagnostic classification, dated and version-controlled as of the relevant decision.
- A note on evidentiary scope: courts and authorities also draw on witness testimony, correspondence, accounting entries, and the entity's subsequent conduct — contemporaneous documentation is the strongest available evidence, not the only evidence.

6.2 Parent Liability Under Article 2497 c.c. in a Partial-Scope Restructuring

Article 2497 of the Civil Code exposes a foreign parent directly — not merely through the derivative liability of local directors — to the Italian subsidiary's creditors and minority shareholders where the parent exercises its *direzione e coordinamento* powers in violation of the principles of sound corporate and entrepreneurial management, causing damage to the subsidiary's asset integrity or profitability. This exposure is not, however, automatic or unavoidable merely because a restructuring is decided at group level, as a downsizing typically is. Liability requires an affirmative showing of four elements: that *direzione e coordinamento* was actually exercised; that it was exercised in violation of sound management principles; that the subsidiary sustained damage to its asset integrity or profitability; and that the damage was caused by that violation. A downsizing decided at HQ and implemented locally satisfies the first element easily; it does not, without more, satisfy the other three.

The presumption that *direzione e coordinamento* is being exercised — a rebuttable one — arises under **Article 2497-sexies c.c.**, in favor of the entity obliged to consolidate the group's financial statements, or that otherwise

controls the Italian subsidiary under Article 2359 c.c. For a foreign multinational parent, this presumption typically applies by default, and displacing it requires an affirmative evidentiary showing that is rarely available once a dispute has already arisen. It is worth being precise about what the presumption does and does not establish: it presumes the relationship of direction and coordination, not the abuse of it, and not liability. Article 2497-bis c.c. is a distinct provision, governing the publicity obligations attached to a disclosed *direzione e coordinamento* relationship — relevant, among other things, to the group-disclosure requirements the *Composizione Negoziata della Crisi* imposes under the Circolare CCII Parte I of 16 July 2026, but not itself the basis of the liability presumption.

The abuse Article 2497 targets is a familiar pattern in downsizing execution: intra-group instructions requiring the Italian entity to divest a function, transfer assets, or absorb restructuring costs in a manner that benefits the global group's cost structure while damaging the subsidiary's own asset base or creditor position — a below-market intra-group transfer of a manufacturing line, or a directive to prioritize cash repatriation to the parent ahead of funding the Italian entity's own severance obligations. The statute excludes liability where damage is absent when the overall result is considered — the *risultato complessivo* doctrine — or where it has been fully eliminated through remedial operations. This is not, as a matter of statutory text, conditioned on the offsetting benefit having been quantified precisely at the time of the transaction; the safe harbor turns on the substantive test of net damage. What Article 2497-ter c.c. does separately require is that decisions influenced by direction and coordination state the reasons and interests that justify them — a documentation obligation distinct from, but practically reinforcing, the substantive safe harbor, since a decision whose stated reasons and quantified group benefit exist only in hindsight is a materially weaker defense than one documented as the decision was made.

OPERATIONAL APPENDIX — §6.2

- **[BINDING]** Art. 2497 c.c. — the entity exercising *direzione e coordinamento* is liable to the subsidiary's creditors and minority shareholders for damage caused by its abuse. — *Condition: requires actual exercise of direction/coordination, breach of sound-management principles, damage, and causation — all four elements, not merely the fact of group-level decision-making.*
- **[BINDING]** Art. 2497-sexies c.c. — rebuttable presumption of *direzione e coordinamento* in favor of the entity obliged to consolidate, or controlling under Art. 2359 c.c. — *Condition: a presumption of the relationship only, not of abuse or of liability; displacing it requires an affirmative showing.*
- **[BINDING]** Art. 2497, safe harbor — damage excluded where absent on the overall result (*risultato complessivo*) or fully eliminated by remedial operations. — *Condition: a substantive test, not formally conditioned on contemporaneous quantification — but Art. 2497-ter's requirement that direction-influenced decisions state their reasons is best satisfied contemporaneously in practice.*
- **[OPEN ITEM]** Art. 2497-bis c.c. governs publicity of the *direzione e coordinamento* relationship, including group-disclosure obligations relevant to the CNC (Circolare CCII Parte I, 16.7.2026). — *Condition: publicity or its absence does not itself determine whether Art. 2497 liability exists — a*

separate question from the 2497-sexies presumption.

Evidentiary output — record produced by this module

- Board minutes documenting the Italian entity's own evaluation of a group-directed transaction, including any dissent or conditions attached.
- A contemporaneous Art. 2497-ter statement of reasons for decisions influenced by direction and coordination.
- Quantification of any offsetting group benefit relied upon under the *risultato complessivo* doctrine.

6.3 Amministratore di Fatto Risk and the Interim-Management Mandate

Article 2497 liability and *amministratore di fatto* liability are frequently — and incorrectly — treated as interchangeable. They are legally distinct regimes. Article 2497 liability attaches to the parent as parent, exercising *direzione e coordinamento*; the claim runs to creditors and shareholders directly. *Amministratore di fatto* liability, by contrast, attaches to a natural person — Italian or foreign, formally appointed or not — found to have exercised, continuously and in substance, the functions of a director without holding the formal office. Where this finding is made, that person loses the protection any limitation of liability associated with the formal corporate structure would otherwise afford, and is exposed to the civil, insolvency, tax, and criminal regimes described in Section 6.1 as if formally appointed.

Italian courts assess *amministratore di fatto* status functionally, looking to the systematic and continuous exercise of management powers in fact — not to job title or reporting line. The evidentiary basis for such a finding is ordinary business conduct: correspondence, meeting participation, and instructions that show who actually decided, regardless of who formally signed. For a foreign multinational executing a downsizing, this risk arises most acutely where HQ personnel — a regional CFO, a group restructuring lead, headquarters legal counsel — communicate directly and repeatedly with Italian creditors, employees' representatives, or the *esperto* in a *Composizione Negoziata* proceeding, issue instructions to Italian management that bypass the formal board process, or are found by the local board to have been the actual source of decisions the board merely ratified.

An improperly scoped interim-management mandate does not reduce this risk; it materially increases it. A foreign parent that installs an interim manager — a headquarters executive on temporary assignment, or an external consultant — without a clearly bounded, board-ratified mandate, and without a governance structure channeling that individual's authority through the formal Italian board, creates precisely the fact pattern the doctrine is designed to capture. It bears emphasizing, however, that a written mandate and board ratification are protective only to the extent they reflect what actually happens. A narrowly drafted mandate is a starting point, not a conclusion: courts look at conduct. If the board's practical role reduces to ratifying decisions substantively made by the mandate-holder, the written mandate itself can become documentary evidence

supporting an amministratore di fatto finding, rather than a defense against one. The relevant distinctions run along a gradient — informational coordination, advisory input, delegated authority exercised under a defined and actively monitored mandate, and formal directorship — and the narrower and more genuinely monitored the delegation, the weaker the basis for an amministratore di fatto inference. This is the structural vulnerability Chapter 7 addresses directly: the appointment of an independent, professionally qualified dottore commercialista as CRO, operating under a mandate that is not only narrowly drafted but actually observed in practice, is the governance response engineered to minimize — not eliminate — this exposure.

OPERATIONAL APPENDIX — §6.3

- **[CASSAZIONE]** The functional test for amministratore di fatto looks to continuous, systematic exercise of management powers in substance. — *Condition: assessed from conduct — correspondence, instructions, meeting participation — not job title, nationality, or formal reporting line.*
- **[CAUTION]** A board-ratified interim-management or CRO mandate is protective only where it reflects actual practice. — *Condition: if the board's role becomes ratification of decisions substantively made elsewhere, the mandate can itself evidence de facto administration rather than defend against it.*
- **[PRACTICE STRUCTURE]** Authority gradient: informational coordination, advisory input, delegated authority under a monitored mandate, formal directorship. — *Condition: each carries a different liability profile; narrower and genuinely monitored delegation weakens the amministratore di fatto inference.*

Evidentiary output — record produced by this module

- Board minutes evidencing genuine deliberation — not ratification — on matters within the CRO's or interim manager's mandate.
- A written, scope-limited mandate, periodically reviewed against the mandate-holder's actual conduct.
- A correspondence protocol directing external contact with creditors, unions, and the esperto through the formally appointed board or CRO, documented where headquarters personnel are copied or consulted.

6.4 Modello 231 Exposure Tied to Divested Versus Retained Activities

The exposures described in Sections 6.1 through 6.3 attach principally to individuals — directors, parent-company officers, amministratori di fatto. Legislative Decree 231/2001 adds a distinct layer that attaches to the entity itself: corporate administrative liability for certain predicate offenses committed in the entity's interest or benefit by persons acting on its behalf, where the entity has not adopted and effectively implemented an

adequate organizational and control model (Modello 231). This liability is additive to, not a substitute for, individual liability, and it is triggered independently of whether any individual director or officer is separately prosecuted.

The predicate-offense catalogue genuinely relevant to a downsizing is narrower than it is sometimes assumed to be, and getting its scope right matters. On the environmental side, **Article 25-undecies** was materially expanded by D.Lgs. 81/2026 (in force 2 June 2026, transposing EU Directive 2024/1203): the amendment added trade in polluting products (Art. 452-bis.1 c.p.) to the predicate catalogue, introduced new contraventions for the production and trade of ozone-depleting substances (Art. 4 of the decree) and fluorinated greenhouse gases (Art. 5), raised the sanction ceiling to 1,200 quote for the existing Art. 25-undecies, comma 1, lett. a) offenses, established a separate 400-800 quote bracket for violations of the new Articles 4 and 5, and created a national environmental-crime coordination unit at the Procura Generale della Cassazione. Site decommissioning is the point in a downsizing most likely to intersect this catalogue.

On the labor side, the relevant predicate is narrower than general Law 223/1991 procedural compliance: **Article 25-septies** reaches workplace manslaughter or serious injury arising from breach of health-and-safety norms (Artt. 589 and 590, comma 3, c.p.) — a risk most likely to intersect a downsizing during site decommissioning and equipment decommissioning activity, not during the collective-dismissal consultation process itself, which does not independently generate 231 exposure.

On data protection, the connection to Decree 231 is real but indirect, and should not be overstated. GDPR and D.Lgs. 196/2003 non-compliance at closure — mishandled employee or customer records, inadequate retention or destruction protocols — is a genuine and separate compliance exposure, addressed in Chapter 4B, but it is not, as such, a 231 predicate offense: a 2013 attempt to add Italian Privacy Code offenses to the Article 24-bis catalogue was not confirmed on conversion into law, and GDPR violations remain outside the 231 predicate list as a general matter. The narrower point at which 231 exposure genuinely arises is **Article 24-bis** computer-crime and unlawful-data-processing offenses — unauthorized access to information systems, or unauthorized data manipulation — conduct that can occur incidentally to IT decommissioning if access controls and data-handling protocols are not properly managed during closure. The Modello 231 update should address that narrower risk specifically, rather than treating general privacy compliance as a 231 workstream.

The Modello 231 analysis must accordingly be scoped separately for divested and retained activities. For activities being divested or discontinued, the question is whether the model in place at the time of the predicate conduct — the decommissioning, the site closure — was adequate to that activity's own risk profile. For activities being retained, the question is whether the downsizing itself has degraded the model's effective coverage going forward — a leaner organization, a narrower control environment, functions previously performed by now-divested personnel. An update (aggiornamento del modello organizzativo) undertaken before the downsizing begins, reflecting both the terminating and the surviving risk profile, belongs at the diagnostic-to-execution transition established in Chapter 1, not as a post-closure remediation exercise.

OPERATIONAL APPENDIX — §6.4

- **[BINDING]** Art. 25-undecies, D.Lgs. 231/2001, as amended by D.Lgs. 81/2026 (in force 2.6.2026) — predicate offenses include trade in polluting products (Art. 452-bis.1 c.p.) and production/trade

of ozone-depleting substances (Art. 4) and fluorinated greenhouse gases (Art. 5). — *Condition: sanction ceiling raised to 1,200 quote for existing lett. a) offenses; a separate 400-800 quote bracket applies to Art. 4/5 violations; national coordination unit established at the Procura Generale della Cassazione.*

- **[BINDING]** Art. 25-septies, D.Lgs. 231/2001 — workplace manslaughter or serious injury from breach of health-and-safety norms (Artt. 589, 590 co. 3 c.p.). — *Condition: this, not ordinary Law 223/1991 procedural compliance, is the labor-connected 231 predicate; site decommissioning is the likely intersection point.*
- **[CAUTION]** GDPR/D.Lgs. 196/2003 non-compliance is not, as such, a 231 predicate offense. — *Condition: a real 2013 attempt to add Privacy Code offenses to Art. 24-bis was not confirmed on conversion; the narrower genuine 231 risk is Art. 24-bis computer-crime/unlawful-data-processing conduct — e.g. unauthorized system access during IT decommissioning — while general GDPR compliance remains a distinct exposure addressed in Chapter 4B.*
- **[PRACTICE STRUCTURE]** Scope the Modello 231 update separately for divested and retained activities, undertaken before the downsizing begins. — *Condition: adequacy is assessed against each activity's own risk profile — a model adequate for ongoing operations is not automatically adequate for a decommissioning project.*

Evidentiary output — record produced by this module

- An updated risk-mapping distinguishing divested-activity from retained-activity predicate-offense exposure, reviewed by the Organismo di Vigilanza.
- An IT-decommissioning protocol addressing access-control and data-handling conduct relevant to Art. 24-bis.
- A site-decommissioning environmental compliance record addressing the Art. 25-undecies catalogue as amended by D.Lgs. 81/2026.

6.5 How Proper Governance Mitigates Each Layer

The five layers described in this chapter share a common structural vulnerability: each turns on whether a documented, contemporaneous, genuinely independent decision-making process existed. Article 2086 liability turns on whether a detection structure existed at all. Article 2486 liability turns on whether directors' conduct once a cause of dissolution arose can be shown to have been confined to asset preservation. Article 2497 liability turns on whether the group-level decision was, in substance, evaluated and reasoned by the Italian entity, and whether any offsetting benefit is demonstrable. Amministratore di fatto exposure turns on whether headquarters involvement operated through, rather than around, the formal board — and on whether that remains true in practice, not merely on paper. Modello 231 liability turns on whether the organizational model was adequate and current at the time of the predicate conduct. In every instance, the evidentiary contest is

retrospective, and what is available at that later date is fixed by decisions made — or not made — during the downsizing itself.

Engagement with the *Composizione Negoziata della Crisi*, addressed fully in Chapter 8, deserves a precise statement here because its liability-mitigating effect is often overstated. **Article 24, comma 5, CCII** exempts payments and operations carried out after the *esperto* accepts the engagement from the preferential-bankruptcy offense (Art. 322, comma 3) and the simple-bankruptcy offense (Art. 323) — provided the conduct is consistent with the state of negotiations and the *esperto*'s assessment of recovery prospects, and provided the *esperto* has not registered a dissent. This exemption does not reach fraudulent bankruptcy under Article 322, comma 1. A separate and broader exemption under **Article 324 CCII** attaches to the outcomes listed in Article 23, comma 1 — most significantly, the agreement countersigned by the *esperto* — once actually achieved, and covers Articles 322(3) and 323 alike. Neither exemption retroactively sanitizes conduct that predates engagement with the CNC, and neither reaches the fraudulent-diversion offense that is, in practice, the layer of greatest concern in a distressed downsizing. Documented, good-faith participation in the CNC is valuable evidence of the entity's overall conduct and intent — and, separately, of the reasoned, independently supervised process Article 2497-ter rewards — but it is not itself a general shield against criminal liability, and this chapter should not be read to suggest otherwise.

An independent, professionally qualified *dottore commercialista* appointed as CRO, operating under a board-ratified mandate that is actually observed in practice, produces the documentation each layer separately requires: a board process demonstrably independent of headquarters instruction, addressing Articles 2497 and *amministratore di fatto* exposure together; a contemporaneous record of the entity's financial condition and the reasoning behind each transaction, addressing Articles 2086 and 2486 together; and, where the entity's condition warrants it, a documented, good-faith CNC engagement that mitigates the specific offenses Article 24(5) and Article 324 CCII reach. As Section 6.3 makes clear, this protection is proportional to how genuinely independent the governance process actually is — the CRO's appointment is the structural precondition for that independence, not a substitute for it.

The purpose of this governance discipline is not to eliminate liability. Italian law does not permit that. Its purpose is to demonstrate that every material decision was identified, evaluated, authorized, documented, and implemented through a disciplined process before events overtook the company. When liability is later assessed — as it often is, years after the restructuring, by a *curatore*, a tax inspector, or a prosecutor who was not present for any of it — a genuine, contemporaneous governance record, tested against the fuller evidentiary picture such a proceeding will assemble, is the most valuable asset the directors, the parent, and the independent CRO possess. Chapter 7 turns to the governance structure engineered specifically to build and preserve that record: the independent CRO's mandate, profile, and required capabilities.

OPERATIONAL APPENDIX — §6.5

- **[BINDING]** Art. 24, co. 5, CCII — exempts post-engagement payments/operations from Art. 322(3) (preferential) and Art. 323 (simple) bankruptcy. — *Condition: conditioned on consistency with negotiations and the esperto's assessment, and on the absence of a registered dissent — does not exempt Art. 322(1) fraudulent bankruptcy.*

- **[BINDING]** Art. 324, CCII — broader exemption from Artt. 322(3) and 323 tied to the outcomes of Art. 23, co. 1 (e.g., the esperto-countersigned agreement) once achieved. — *Condition: distinct from, and additional to, the Art. 24(5) exemption; neither reaches Art. 322(1) or sanitizes pre-CNC conduct.*
- **[PRACTICE STRUCTURE]** An independent CRO mandate, board-ratified and actually observed, produces the contemporaneous documentation each layer in 6.1-6.4 requires. — *Condition: protective in proportion to the mandate's genuine independence in practice, not by virtue of the appointment or the written document alone.*

6.6 What the Record Must Show — Master Evidentiary Index

The following consolidates the evidentiary output of every section above into a single index. Each item should exist, dated and documented, before this chapter's exposure is tested rather than assembled in response to a challenge.

§6.6 — Master evidentiary index

§6.1 Stratified framework: contemporaneous board minutes recording distress indicators and remedial steps; cash-flow and solvency assessments at each decision point; the dated, version-controlled Chapter 2 diagnostic.

§6.2 Parent liability: board minutes evidencing the Italian entity's own evaluation of group-directed transactions; the Art. 2497-ter statement of reasons; quantification of any offsetting group benefit.

§6.3 Amministratore di fatto: board minutes evidencing genuine deliberation, not ratification; the written, scope-limited interim-management/CRO mandate, periodically reviewed against actual conduct; the external-correspondence protocol.

§6.4 Modello 231: the updated, divested/retained risk-mapping reviewed by the OdV; the IT-decommissioning access-control protocol; the site-decommissioning environmental compliance record.

§6.5 Governance mitigation: the documented, good-faith CNC engagement record where applicable, referenced against the specific Art. 24(5)/324 CCII exemptions it supports; the consolidated governance record demonstrating an independent, disciplined process across Sections 6.1-6.4.

Why This Matters to a Foreign Parent

The five layers addressed above do not operate as a menu from which a foreign parent selects the risks it is prepared to accept; they operate cumulatively, on the same set of facts, assessed by different authorities at different times, often years apart. A downsizing that is technically compliant under each pillar addressed in Chapters 3 through 5, considered separately, can still generate liability under this chapter's framework where

the governance record, the transfer-pricing characterization, and the entity's own conduct at the time tell inconsistent stories about why a decision was made and what it cost the Italian entity.

Coordinating that record — so that the governance, tax, and labor narratives are, in substance, one narrative, told the same way to the board, to the tax authority, and, if it comes to it, to a *curatore* or a prosecutor — is the specific function an independent CRO, operating across all three pillars from a single factual base, is positioned to perform in a way a fragmented panel of separately retained advisors, each visible only into its own workstream, structurally cannot.

This chapter is a liability map, not a substitute for counsel

Every rule, threshold, and exemption above requires verification against the specific facts of the Italian entity's financial condition, group structure, and transaction history by qualified Italian corporate, insolvency, and criminal counsel before any decision is implemented.

No board resolution, intra-group transfer, or engagement with the *Composizione Negoziata della Crisi* should proceed without that counsel's direct, contemporaneous involvement.

The chapter that follows turns to the governance response this chapter has referenced repeatedly: the appointment of an independent CRO, operating under a mandate designed specifically to produce the documented, contemporaneous, genuinely independent process on which every layer of exposure identified above ultimately turns.

Chapter 7

Pillar IV (Cross-Cutting): The Independent CRO — Governance, Mandate, and Execution

Each section pairs a narrative discussion with a compact operational appendix.

Legal and tax status reviewed as of 15 August 2026.

7.0 Introduction to the Chapter

Chapters 3 through 6 established what a downsizing requires: a governance record that survives scrutiny under Articles 2086 and 2497 c.c.; a tax architecture defensible under OECD Chapter IX and, where the restructuring causes Italy to acquire or lose taxing rights, Articles 166/166-bis TUIR; a labor process compliant with Law 223/1991; and a liability posture that anticipates civil, insolvency, tax, and criminal exposure before it crystallizes. This chapter asks a different question: who executes all of that, and why the answer determines whether the downsizing succeeds.

Most Italian downsizing projects do not fail because the legal advice is wrong, the tax analysis is incorrect, or the labor strategy is poorly conceived. Taken individually, the workstreams described in Chapters 3 through 6 are, in the great majority of troubled engagements this practice has observed, technically sound. They fail because those workstreams are executed independently of one another, by different advisors working from different assumptions, on different timelines, producing documentation that no single party is responsible for reconciling. This chapter's argument is that the integration function required to close that gap is a specific, legally defined role — and that defining it precisely, rather than gesturing at it, is what makes the role usable rather than aspirational. That precision is also, as the sections below make clear, what separates a genuinely independent process from one that merely looks independent while leaving every underlying legal duty exactly where it always sat: with the Italian company's own directors.

7.1 Why Italian Downsizings Fail: The Integration Gap

The tax advisor models a functional downgrade on a closure date the labor advisor's Law 223/1991 timeline cannot actually deliver. The law firm drafts a branch-transfer agreement whose employment schedule diverges from the headcount the CIGS application already committed to the Ministero del Lavoro. Local management, HQ, and outside counsel each report a different version of the plan to the board, and the board minutes — the primary evidentiary record discussed in Chapter 6 — end up documenting three inconsistent decisions rather than one coherent one.

This is not solved by hiring better specialists. Each of the advisors a foreign HQ instinctively assembles for a distressed or semi-distressed Italian process is competent within its own domain and structurally unable to see beyond it:

Advisor	Owns	Cannot own
Italian/international law firm	Contract drafting, litigation risk, branch-transfer mechanics	Financial modeling, tax compensation methodology, going-concern diagnostics

Advisor	Owns	Cannot own
Big Four advisory practice	Tax technical work, financial due diligence	Continuous personal accountability for the outcome; typically engaged workstream-by-workstream, not as a standing executive function
HR/labor consultant	Redundancy procedure mechanics, union negotiation tactics	Tax and governance consequences of the labor strategy it is designing
Local management	Operational continuity, day-to-day execution	Independent authorization of its own restructuring, for the reasons set out at 7.2

None of these parties is positioned, mandated, or incentivized to reconcile the four columns of Chapter 1's pillar framework into a single, coherent, defensible plan. What is structurally required, in addition to competent specialists, is a single accountable lead who holds the whole picture and is answerable for its coherence — professionally, where the role is structured as an advisory or *procura*-based mandate, or personally as a matter of director duty, where the legal capacity selected under §7.3 confers management authority. The sections that follow define that role with legal precision, because an integration function invoked loosely does no better than the fragmentation it is meant to replace.

This is also why the mandate this chapter describes extends naturally beyond distress-driven downsizing into the private equity context named in Chapter 1's audience. A PE-owned platform executing an Italian carve-out, a post-acquisition manufacturing consolidation, or a bolt-on integration faces the identical integration problem — legal, tax, labor, and operational workstreams proceeding on separate tracks under commercial time pressure — even absent any insolvency-adjacent risk.

OPERATIONAL APPENDIX — Why Downsizings Fail

[GUIDE NOTE — structural, not doctrinal] Basis: practice observation across engagements, not a statutory or judicial source. Function: frames the chapter's argument; the legal architecture that follows in 7.3–7.9 is what makes the integration function usable rather than aspirational.

7.2 The Conflict of Self-Execution: Why Local Management Is Frequently Unsuitable as the Sole Integrator

A downsizing decided at Headquarters and executed by the Italian subsidiary's own management places the individuals responsible for implementation in a position of conflict along three dimensions. First, an employment interest: the manager executing the wind-down of their own function is, in most cases, executing the wind-down of their own role, which creates an incentive to delay, to understate the severity of the underlying financial position, or to resist the redundancy thresholds Chapter 5 requires them to trigger promptly. Second, a reputational interest with the local workforce, unions, and the wider community in which the site operates — the episodes referenced elsewhere in this guide illustrate how this can escalate into confrontation that outlasts any single manager's tenure. Third, and most consequential for the parent, a documentation interest: local management assembling the record of its own decision-making may face strong incentives to construct a narrative of prudence after the fact, rather than to generate the contemporaneous record Chapter 6 identified as supporting the defense against *amministratore di fatto* exposure and liability under Article 2497 c.c.

None of this implies bad faith. It implies that the Business Judgment Rule protects diligence, not intention, and diligence is difficult to prove when the party generating the evidence of diligence is also the party whose interests the evidence protects. The negotiation authority point deserves its own note: where local management retains informal control over union communications, vendor negotiations, or tax-authority contact even after a CRO is engaged, the conflict described above simply migrates to those channels rather than being resolved. An effective mandate transfers negotiation-facing authority to the CRO as deliberately as it transfers documentation ownership.

OPERATIONAL APPENDIX — Conflict of Self-Execution

[PRACTICE STRUCTURE — conflict channels] Risk channels: (i) employment self-interest in delay or understatement; (ii) reputational exposure outlasting management tenure; (iii) retrospective rather than contemporaneous documentation. Mitigation: transfer negotiation-facing authority (unions, vendors, tax authority) to the CRO expressly, not only document-drafting authority — an unaddressed channel reproduces the conflict.

7.3 The CRO's Legal Capacity: Selecting the Model

"CRO" is a market term, not a statutory Italian corporate office. Before any discussion of powers, the engaging company must select — and record in writing — which legal capacity the CRO will actually hold, because the five principal models below carry materially different authority and materially different liability. The list is illustrative rather than legally exhaustive, and the models are not mutually exclusive: an advisory engagement is routinely combined with a narrowly scoped *procura* for specific signature powers.

CRO model	Legal effect
External adviser	Coordinates and recommends; no inherent corporate decision or signature authority
Attorney-in-fact under a <i>procura</i>	Can represent or sign within the precise authority granted; the <i>procura</i> does not confer director status or director duties
Board member with delegated powers (Art. 2381-bis c.c.)	Receives management authority within the delegation and assumes directors' duties and potential liability — available only to a person who is, or becomes, a board member
<i>Direttore generale</i> (Art. 2396 c.c.)	May hold management functions and corresponding exposure, depending on formal appointment and the duties actually assigned
Interim employee/manager	Exercises internal operational authority subject to the board's supervision and the company's own policies

An earlier structuring assumption — that a board could delegate management authority to an external consultant under Article 2381 c.c. — no longer holds. D.Lgs. 27 March 2026, n. 47 restructured board delegation into Articles 2381, 2381-bis, and 2381-ter c.c., in force from April 2026: delegation under the new Article 2381-bis runs only to an executive committee or to one or more board members, never to a party outside the board. A foreign HQ that wants the CRO to hold genuine delegated management authority must therefore appoint that individual to the board itself, and accept the director duties that come with the office; where the group prefers to keep the CRO outside the corporate body, the workable models are the *procura*, the *direttore generale* appointment, or an advisory mandate with narrower, representation-only authority. These are not interchangeable labels for the same thing, and Chapter 3's branch-transfer discussion — where "full

management powers under a *procura*" appears — should be read subject to this same distinction: a *procura* confers representative authority within its terms; it does not transfer the directors' office or their statutory responsibility.

OPERATIONAL APPENDIX — Legal Capacity of the CRO

[BINDING — Art. 2381-bis c.c., as introduced by D.Lgs. 27 marzo 2026, n. 47] Status: current, Aug 2026; in force from April 2026. Rule: delegation of board management authority runs only to an executive committee or to one or more board members. Consequence: an external CRO cannot receive Art. 2381-bis delegation without first becoming a board member.

[PRACTICE STRUCTURE — model selection] Action: record in writing, before mandate commencement, which of the five principal models (adviser / *procura* / delegated director / *direttore generale* / interim manager) applies, noting that models may be combined. Cross-reference: revise Chapter 3 §3.4's "full management powers under a *procura*" language against this same distinction, and Chapter 3's reference to "Composizione Negoziata under Chapter 7" to Chapter 8.

[CAUTION — terminology] Risk: treating "CRO" as if it were itself a source of authority, rather than a role that must be housed inside one of the five legal models above.

7.4 The Italian Board's Retained Authority

The Italian board is not a supervisory body standing apart from execution. Article 2380-bis c.c. places management of the company with its directors, and that allocation is not displaced by engaging a CRO under any of the models in 7.3. Directors may delegate specific functions; they do not thereby divest themselves of the board's reserved powers. Directors retain their information rights and duty to act on an informed basis under Article 2381-ter c.c., and the board may, under Article 2381-bis c.c., issue directions to any delegated body and reclaim (*avocare*) a delegated matter to itself at any time. Article 2381-bis further makes certain matters non-delegable outright — including decisions on whether to access a CCII crisis or insolvency regulation instrument, which the reform assigns to the board acting collegially rather than to any individual delegate, however senior. For an S.r.l., the equivalent analysis runs through Article 2475 c.c., the company's own articles of association, and any specific shareholder rights reserved under Article 2479 c.c. — the S.p.A. delegation architecture above should not be assumed to transpose directly.

The operative proposition for this guide is therefore narrower than earlier framing suggested: the CRO coordinates and, where validly authorized under one of the 7.3 models, executes the programme. The Italian directors retain every power and responsibility that Italian law, the articles of association, or the board's own reserved-matters schedule does not validly allocate elsewhere. This is not a limitation on the CRO's usefulness — it is the condition under which the CRO's work is legally effective at all.

OPERATIONAL APPENDIX — Board's Retained Authority

[BINDING — Art. 2380-bis c.c.] Rule: management of an S.p.A. is a function of its directors; this is not displaced by engaging a CRO in any capacity.

[BINDING — Art. 2381-ter c.c., introduced by D.Lgs. 47/2026] Rule: directors retain their information rights and duty to act on an informed basis; each director may request that delegated bodies provide the board with management information.

[BINDING — Art. 2381-bis c.c., board's power to direct and reclaim] Rule: the board determines the content, limits, and exercise modalities of any delegation; it may at any time issue directions to delegated bodies and reclaim (*avocare*) operations falling within the delegation.

[BINDING — Art. 2381-bis c.c., non-delegable matters] Rule: decisions to access a CII crisis/insolvency instrument, and the content of any related proposal or plan, are reserved to the collegial board and cannot be delegated to the CRO or to any single director.

[CAUTION — entity type] Scope limit: the above is S.p.A.-specific. For an S.r.l., analyze separately under Art. 2475 c.c., the articles of association, and Art. 2479 c.c. shareholder rights before assuming equivalent delegation is available.

7.5 The Profile: The Case for a Dottore Commercialista

Section 7.1's table shows why a law firm engaged to run the process is, structurally, an advisor to a decision someone else must still make and own. A downsizing is, at its core, a financial and accounting exercise: continuous solvency and liquidity monitoring against the Article 2086 c.c. adequate-organizational-structure standard; the transfer pricing documentation Chapter 4A treats as the primary defense of any functional-change compensation; the CIGS cost modeling Chapter 5 places at the center of the labor strategy; and, where the process escalates, the accounting and disclosure competence the CNC *esperto* mechanism in §7.6 and Chapter 8 presupposes in the parties around the table. The *dottore commercialista* is the professional register whose statutory competence spans exactly this ground, and whose engagement is subject to a regulated professional framework — disciplinary oversight by the Ordine dei *Dottori Commercialisti e degli Esperti Contabili*, applicable professional standards, and mandatory professional-liability insurance — creating independent accountability of a kind the market-standard advisory panel in 7.1's table does not otherwise supply.

That said, the claim should be stated at the weight the evidence in 7.1 actually supports, not beyond it. D.Lgs. 139/2005 recognizes extensive competence for *commercialisti* in corporate, accounting, tax, valuation, and restructuring matters; it does not make the entire CRO function an exclusive professional activity, and it does not bar a lawyer or another qualified professional from coordinating the same work. This chapter's position is a competence-based conclusion, not a claim of legal necessity: the preferred CRO possesses demonstrable Italian restructuring, accounting, tax, labor-cost, and governance expertise, and — for the specific reasons developed across 7.1 through 7.4 — that combination is most consistently found among senior *dottori commercialisti* with cross-border restructuring experience. The CRO is not, in any of the models in 7.3, a substitute for employment counsel, tax counsel, transfer-pricing specialists, or a *consulente del lavoro*; §7.8 defines how those functions sit alongside the role rather than beneath it.

OPERATIONAL APPENDIX — The Profile

[PRACTICE STRUCTURE — competence basis] Basis: D.Lgs. 139/2005 competence scope (accounting, tax, corporate, valuation, restructuring). Scope limit: not an exclusive-activity reservation; other qualified professionals are not legally barred from the coordinating role, though the guide's competence-based conclusion favors the *dottore commercialista* profile.

[GUIDE NOTE — positioning] This section states a professional-fit conclusion drawn from 7.1–7.4, not a claim that Italian law requires this specific qualification.

7.6 The CRO and the CNC Esperto: Two Distinct Functions

Where the downsizing escalates into a *Composizione Negoziata della Crisi* under Chapter 8, the CRO's role must be kept structurally separate from that of the *esperto* — the independent professional appointed under the CCII to facilitate negotiation between the debtor and its creditors and to assess whether concrete prospects for recovery exist. The CRO is an integration-lead function — engaged by and answerable to the company, designing and running the operational programme — that becomes an executive function specifically where the legal capacity selected under §7.3 confers management authority (delegated director, *direttore generale*, or interim manager with appropriate internal powers). The *esperto*, by contrast, performs an independent statutory facilitation and negotiation function: appointed through the CCII platform, independent of the company by definition under Article 2, comma 1, lett. o) CCII, and subject to the independence requirements of Article 16 CCII. The *esperto* does not generally certify, approve, or guarantee the restructuring outcome; the function is to facilitate the negotiation and report on its prospects, not to attest to a plan in the manner of an *attestatore* in a *concordato preventivo*. Combining the CRO and *esperto* roles in the same individual defeats the independence Article 16 CCII reserves to the latter function and would undermine the independence and credibility of the negotiated process the *esperto* is required to facilitate. That prohibition on a single individual holding both roles follows directly from the CCII's own independence rules. Extending the same exclusion to other professionals within the CRO's firm is this guide's recommended conflict-of-interest policy — a sound precaution, but one that should be applied and stated as guide policy rather than presented as an automatic statutory rule in every case.

OPERATIONAL APPENDIX — CRO vs. Esperto

[BINDING — Art. 2, comma 1, lett. o) D.Lgs. 14/2019 (CCII)] Definition: *esperto* is an independent third-party professional, distinct by statute from any party representing the debtor company.

[BINDING — Art. 16 CCII] Rule: independence requirements applicable to the *esperto*'s appointment.

[CAUTION — role conflation] Statutory rule: the same individual cannot hold both the CRO and *esperto* roles on the same file without defeating the independence Art. 16 CCII requires of the *esperto*. Guide policy (not itself a blanket statutory rule): extend the same exclusion to other professionals within the CRO's firm.

7.7 Six Core Capabilities of the Executive Integrator

An effective CRO mandate rests on six capabilities, each answering a specific failure mode identified above. Not every model in §7.3 confers executive authority: where the CRO acts as an external adviser or under a narrowly scoped *procura*, the capabilities below describe an integration-lead role; they describe an executive role only where the selected legal capacity — delegated director, *direttore generale*, or interim manager with internal powers — actually confers management authority. The distinction carries through §§7.8–7.11.

(i) Objectivity. The CRO holds no employment relationship with the Italian subsidiary independent of the mandate itself, and reports primarily to the Italian board (§7.9), not to a diffuse set of informal HQ contacts. This is the direct answer to 7.2.

(ii) Italian regulatory expertise, current and jurisdiction-specific. Working, current knowledge of the CCII (D.Lgs. 14/2019 as amended, and its post-2026 corporate-governance interaction under D.Lgs. 47/2026), the collective dismissal mechanics of Law 223/1991, and the Agenzia delle Entrate's issued positions — including Circolare 5/E of 16 July 2026 on the tax aspects of the CCII.

(iii) OECD Chapter IX-aligned documentation practice. As Chapter 4A established, the ORA (options realistically available) test depends on a contemporaneous functional and commercial-rationale record; not every element of the formal transfer pricing documentation must literally predate the transaction, but the underlying analysis should. The CRO owns the collection, consistency, and timely production of this contemporaneous factual record from the outset; the transfer pricing adviser owns and validates the technical methodology, and the Italian company's competent corporate body approves the transaction and its documented rationale — the CRO coordinates this chain but does not itself sign off on the technical conclusion.

(iv) Correctly scoped exposure, not liability absorption. Where the CRO holds delegated management authority under one of the 7.3 models, the CRO assumes the duties that attach to that specific delegation — this is a genuine reallocation of some exposure to a party equipped to carry it, addressed precisely in §7.11, and is not a general absorption of the board's own retained liability.

(v) Stakeholder intermediation, with authority to match. The CRO functions as the primary point of contact across unions (§5.7), the Agenzia delle Entrate, works councils (RSA/RSU, and the European Works Council where applicable), and — where §7.6 applies — coordinates with, but is never, the *esperto*.

(vi) Audit-ready documentation discipline. Every material decision — the classification outputs of Chapter 2, the compensation methodology of Chapter 4A, the CIGS-versus-redundancy analysis of Chapter 5, the liability-mitigation steps of Chapter 6 — recorded to a standard that satisfies an external auditor, a tax inspector, or a court.

OPERATIONAL APPENDIX — Six Capabilities

[GUIDE NOTE — cross-reference] (i)→7.2 and 7.9; (iii)→Chapter 4A; (iv)→7.11; (v)→§5.7, corrected from a prior draft's reference to 5.6.

7.8 Authority Matrix: Reserved Matters and Delegated Powers

Because §7.4 establishes that the board's reserved powers are not displaced by the CRO's engagement, an effective mandate requires an explicit, written authority matrix rather than a general grant of "coordination" authority. The matrix should distinguish, for the specific engagement: matters the CRO may implement directly, under whichever 7.3 model applies; matters requiring prior Italian-board approval; matters reserved to the shareholders; matters that cannot be delegated at all under Article 2381-bis c.c. (§7.4); signature powers granted by a specific, registered *procura*, stated by scope and euro limit; and matters requiring specialist legal, tax, employment, or transfer-pricing advice that the CRO coordinates but does not itself resolve. This matrix, adopted by board resolution alongside the CRO's engagement letter, is the practical instrument that makes the 7.3 legal-capacity choice and the 7.4 non-delegable-matters list operative day to day, and it is itself part of the audit-ready record described in 7.7(vi).

OPERATIONAL APPENDIX — Authority Matrix

[PRACTICE STRUCTURE — matrix content] Required categories: (1) CRO-implementable directly; (2) board-approval required; (3) shareholder-reserved; (4) non-delegable under Art. 2381-bis c.c.; (5) *procura*-based signature authority, scoped and capped; (6) specialist-advisor-owned, CRO-coordinated only. Instrument: board resolution + engagement letter, adopted before mandate commencement.

[CAUTION — entity-specific capital-loss competencies] Capital-loss and recapitalization decisions carry different board/shareholder competencies for an S.p.A. (Arts. 2446/2447 c.c.) than for an S.r.l. (Arts. 2482-bis/2482-ter c.c.). The

authority matrix should specify the applicable regime for the entity in question rather than assume the S.p.A. rules transpose directly — see also §7.13.

7.9 Reporting Lines: Italian Board Primacy and HQ Oversight

The CRO's primary accountability runs to the Italian board — not to HQ — because the directors' duties described in §7.4 continue throughout the mandate and cannot be discharged if the board is not the entity actually receiving the CRO's substantive reporting. This is not merely a formal point. A CRO reporting only to the parent's CFO or General Counsel, with the Italian board informed after the fact or by summary, tends to strengthen rather than weaken the evidentiary case that the parent is exercising direct operational control over the subsidiary — precisely the fact pattern Chapter 6.3 identifies as central to *amministratore di fatto* exposure for HQ personnel, and precisely the outcome an independent CRO mandate is meant to avoid.

The workable structure is therefore layered: formal, minuted reporting to the Italian board as the primary line, on a fixed cadence, covering the matters in the §7.8 matrix; and a defined, secondary reporting line to an HQ steering committee — typically chaired by the CFO or General Counsel — covering strategic and funding matters properly within the parent's own remit as shareholder. The parent may determine group strategy, decide whether to fund the process, and exercise its own shareholder rights; it does not thereby acquire "ultimate go/no-go authority" over decisions the Italian board must independently take in the subsidiary's own interest, and any parent instruction that would require the board to act against that interest should be reasoned through, and where necessary declined, consistently with Article 2497-ter c.c.'s requirement that decisions influenced by *direzione e coordinamento* be adequately explained. This dual structure is also the practical answer to §7.2: it gives HQ the visibility the dual mandate in §7.10 requires it to have, without collapsing the Italian board's own accountability into an informal HQ reporting line.

OPERATIONAL APPENDIX — Reporting Lines

[PRACTICE STRUCTURE — reporting structure] Primary line: Italian board, minuted, fixed cadence, covering the §7.8 matrix. Secondary line: HQ steering committee, covering strategy and funding only.

[CAUTION — HQ-only reporting] Risk: HQ-only or HQ-primary reporting strengthens evidence of parent operational control, contrary to the Chapter 6.3 *amministratore di fatto* defense the mandate is meant to build.

[BINDING — Art. 2497-ter c.c.] Rule: decisions influenced by the exercise of *direzione e coordinamento* must be adequately reasoned; a parent instruction that would require the board to act against the subsidiary's own interest should be documented and, where necessary, declined on this basis.

7.10 The Dual Mandate: Operating While Divesting

The governing distinction of this guide — downsizing as the general case, full exit as the exception — means the CRO's mandate is rarely confined to closure alone. In most engagements, the CRO must simultaneously keep a residual Italian operation running at an acceptable standard while executing the reduction of the divested portion: maintaining staffing and quality control on a retained line while negotiating the CIGS or redundancy treatment of an adjacent one (Chapter 5); preserving customer relationships and delivery performance on retained accounts while transferring or terminating others; and maintaining the Article 2086 c.c. adequate-structure standard for the surviving entity even as the divested portion is, by definition, operating below its historical structure.

The practical resolution is a formally documented allocation of the CRO's attention across the two workstreams, reviewed on a fixed cadence with the reporting structure in §7.9, with pre-agreed criteria for escalating resourcing to the retained-business workstream if commercial performance risk emerges. Absent this discipline, the externally imposed deadlines of the divestment workstream — Law 223/1991 timelines, CNC procedural windows — can starve the retained business of the governance attention Article 2086 c.c. requires it to receive in its own right. This is also where the private equity variant introduced at §7.1 converges most closely with the pure downsizing case: a carve-out or post-acquisition integration presents the identical dual burden under commercial rather than distress-driven time pressure, and the same discipline applies in either setting.

OPERATIONAL APPENDIX — Dual Mandate

[PRACTICE STRUCTURE — resourcing discipline] Instrument: documented attention-allocation reviewed on the §7.9 cadence, with pre-agreed escalation triggers (customer-exit risk, supplier-term tightening, quality incident) favoring the retained-business workstream.

7.11 Liability: What Appointment Achieves — and What It Does Not

A properly structured CRO mandate does not "absorb" or "relocate" the board's liability. A delegated director appointed under Article 2381-bis c.c. assumes duties within the scope of that delegation, but this does not eliminate: the board's own retained and reserved responsibilities under §7.4; directors' duties to act on adequate information; the statutory auditors' (collegio sindacale) supervisory responsibilities where the entity has one; the parent's own exposure under Articles 2497–2497-septies c.c.; the potential liability of any person who in fact exercises management powers, whatever their formal title; or liability arising from unlawful instructions or from inadequate funding of the Italian entity by the parent. Where the CRO acts under a *procura* or as an external adviser rather than as a delegated director, the CRO assumes contractual and professional liability toward the engaging company, which is a real and useful accountability mechanism, but is not a substitute for the directors' own statutory exposure.

Formal appointment, documented under one of the §7.3 models with a defined §7.8 matrix and §7.9 reporting structure, is nonetheless an important component of the evidentiary record, provided the authority matrix, reporting lines, and the CRO's actual conduct remain consistent with it: it is evidence of a genuine, structured attempt at independent, informed decision-making, of the kind Chapter 6 identifies as supporting — though not by itself determining — the defense to *amministratore di fatto* findings and to liability under Article 2497 c.c. Actual conduct, the substance of board deliberations, the information flows the mandate actually produced, and contemporaneous financial evidence may matter as much as, or more than, the appointment document itself. A CRO appointed on paper and then bypassed in practice, through the informal-instruction pattern §7.2 and §7.9 both warn against, supplies no protection at all. Courts and authorities examine actual conduct; a properly structured mandate is what makes that conduct defensible, not what makes it irrelevant.

OPERATIONAL APPENDIX — Liability

[CAUTION — corrected language] Deleted from prior draft: "absorption" and "relocation" of directors' liability. Corrected position: delegation reallocates duties within its scope; it does not eliminate the board's retained duties, the parent's Art. 2497–2497-septies exposure, or de facto-manager liability arising from actual conduct.

[BINDING — Arts. 2497–2497-septies c.c.] Scope note: replace any reference to "Article 2497 clawback" with "potential liability under Article 2497" — it is a damages regime, not a clawback provision.

[PRACTICE STRUCTURE — evidentiary value] Formal appointment under a documented §7.3/§7.8/§7.9 structure is an important component of the evidentiary record — it supports, but does not by itself determine, the defense to Art. 2497 c.c. liability or an *amministratore di fatto* finding. It requires consistent conduct throughout the mandate to retain that value.

7.12 Cross-Border Risk: Permanent Establishment and the Mandate's Physical Locus

The permanent establishment analysis for a cross-border CRO mandate runs in a specific direction that is easy to get backward. Three distinct scenarios need separating: a person located in Italy acting for the foreign parent may create an Italian fixed-place or dependent-agent permanent establishment of the parent; a person located outside Italy acting for the Italian subsidiary may create a foreign permanent establishment, tax-residence, or place-of-effective-management risk for the Italian company in that other jurisdiction; and an independent foreign adviser who supervises the restructuring without habitually concluding contracts for, or playing the principal role in concluding contracts for, the Italian entity does not automatically create a permanent establishment merely by virtue of that supervisory role. Article 162 TUIR requires a fact-specific analysis of where the relevant activity actually occurs, for which enterprise the person is acting, and whether that person habitually concludes contracts, or habitually plays the principal role leading to their conclusion, for that enterprise — a hybrid mandate structure in which a supervising partner sits abroad and exercises effective decision-making authority remotely is the fact pattern that most warrants this analysis, in either direction depending on which entity the authority is exercised for.

OPERATIONAL APPENDIX — Permanent Establishment

[BINDING — Art. 162 TUIR] Test: fact-specific; requires identifying (a) location of activity, (b) the enterprise for which the person acts, (c) whether contracts are habitually concluded, or the principal role in their conclusion habitually played, for that enterprise.

[GUIDE NOTE — direction of analysis] Scenario 1: person in Italy for the foreign parent → possible Italian PE of the parent. Scenario 2: person outside Italy for the Italian subsidiary → possible foreign PE/residence risk for the subsidiary. Scenario 3: independent foreign adviser, supervisory only → no automatic PE.

[GUIDE NOTE — completing the test] Beyond the dependent-agent analysis above, a complete Art. 162 TUIR review also addresses: whether a fixed place of business is at the enterprise's disposal; the applicable double-tax treaty and any treaty-specific service-PE provision; whether the person is legally and economically independent of the enterprise; and the duration, location, and habitual nature of the activity. Domestic TUIR analysis is the starting point; the applicable treaty is reviewed alongside it, not as an afterthought.

[GUIDE NOTE — terminology] Throughout this guide, "permanent establishment" is spelled out where it could otherwise be read as "private equity" in the same discussion.

7.13 Escalation to Full Exit: Defined Triggers

The CRO mandate as structured through §§7.1–7.12 is calibrated to downsizing. Escalation toward full exit, addressed in full in Chapter 11, should be triggered on defined conditions rather than general judgment alone:

OPERATIONAL APPENDIX — Escalation Triggers

[PRACTICE STRUCTURE — trigger 1: organizational inadequacy] Evidence: retained entity fails the Art. 2086 c.c. adequate-structure test on a standalone, post-downsizing basis. Note: a thin structure is not automatically inadequate

— adequacy depends on design, not headcount alone. Monitoring: monthly organizational-adequacy assessment by the CRO, supported by a rolling 13-week cash-flow forecast; monitoring shifts to weekly once liquidity headroom approaches a defined threshold. Escalation: Italian board, then HQ steering committee; any material deterioration is escalated immediately, irrespective of the ordinary cadence. Decision body: Italian board resolution; HQ funding decision. Deadline: board review within 30 days of a routine flag; immediate for a material deterioration.

[PRACTICE STRUCTURE — trigger 2: going-concern and CCII "crisis"/"insolvency" thresholds] Evidence: liquidity/solvency trajectory approaching the CCII's statutory definitions of crisi or insolvenza (D.Lgs. 14/2019), or capital-loss procedures under Arts. 2446/2447 c.c. for an S.p.A., or Arts. 2482-bis/2482-ter c.c. for an S.r.l. Monitoring: continuous, per Art. 2086 c.c. adequate-structure obligation, supported by the same rolling 13-week cash-flow forecast referenced under trigger 1. Escalation: immediate, to Italian board and HQ. Decision body: board, subject to the non-delegable-matters rule at §7.4. Deadline: statutory timelines under the CCII and Arts. 2446/2447 or 2482-bis/2482-ter c.c. govern, not an internal target.

[PRACTICE STRUCTURE — trigger 3: inability to fund statutory obligations] Evidence: inability to fund wages, TFR, taxes, or social security contributions as they fall due. Monitoring: continuous, via the same rolling 13-week cash-flow forecast; immediate escalation of any material deterioration regardless of the ordinary reporting cadence. Decision body: board; potential Art. 2484 c.c. dissolution grounds require separate, specific analysis.

[PRACTICE STRUCTURE — trigger 4: group strategy change] Evidence: parent-level divestiture, change of control, or strategic exit from the Italian market removing the commercial rationale for any retained footprint. Monitoring: HQ-initiated. Decision body: HQ strategic decision; Italian board independently assesses the resulting entity's position under the same standards as triggers 1–3.

In each case, the CRO's role mirrors the role established throughout this chapter: the CRO does not make the strategic decision to exit — that remains HQ's, exercised through the Italian board's own decision-making — but supplies the independent, documented diagnostic on which that decision is made, and carries the governance discipline built here forward into Chapter 11.

7.14 What the Record Must Show — Master Evidentiary Index

The following consolidates the evidentiary output of every section above into a single index. Each item should exist, dated and documented, before this chapter's compliance is tested rather than assembled in response to a challenge: the §7.3 written selection of legal capacity; the board resolution and engagement letter adopting the §7.8 authority matrix; the §7.9 minuted board reporting record, separate from any HQ steering-committee record; the §7.6 documentation that the *esperto* function, where engaged, sits with a party independent of the CRO; the §7.10 dual-mandate resourcing log; and the §7.13 trigger-monitoring record.

OPERATIONAL APPENDIX — Using This Chapter

[GUIDE NOTE — scope of the appendix labels] The BINDING / PRACTICE STRUCTURE / CAUTION / GUIDE NOTE labels used throughout this chapter are decision flags for further verification, not a substitute for independently confirming: entity type (S.p.A. or S.r.l.); the company's articles of association; existing delegations and procure already in place; current financial condition; the applicable collective bargaining agreement; the specific transaction structure; and the applicable double-tax treaty. Legal and tax status reviewed as of 15 August 2026.

Why This Matters to a Foreign Parent

The legal mechanics addressed above are the condition under which the integration function described in §7.1 actually functions, not a constraint layered on top of it. An integration executive appointed without regard to §§7.3–7.4's legal-capacity and non-delegable-matters rules does not close the governance gap this chapter

opens with — it creates a new one, because the appointment looks like independent governance without functioning as it. Coordinating the tax, labor, and governance narrative into one coherent record, and doing so through a legally sound structure rather than a merely plausible-sounding one, is the specific function an independent CRO — correctly positioned under this chapter — is engaged to perform, in a way a fragmented panel of separately retained advisors structurally cannot.

The chapter that follows turns to the *Composizione Negoziata della Crisi* itself: the confidential negotiation track for which §7.6 has already drawn the boundary between the CRO's executive role and the *esperto's* independent one.

Chapter 8 — Early Intervention and Negotiated Restructuring: The Composizione Negoziata della Crisi

8.0 Introduction: From the CRO Mandate to the Negotiation Venue

Chapter 7 established that the governance gap identified across Chapters 3 through 6 is closed by the appointment of an independent, professionally qualified *dottore commercialista* acting as Chief Restructuring Officer. That appointment answers the question of who governs the downsizing. It does not, by itself, answer a distinct and prior question that a subset of downsizing scenarios will present: whether the downsizing can proceed entirely through the voluntary, self-financed instruments described in Chapters 3 through 7, or whether the financial condition of the Italian entity — or the scale of creditor exposure the downsizing itself will generate — calls for a structured negotiation venue with statutory protections.

This chapter addresses that question through the *Composizione Negoziata della Crisi* (CNC), introduced by Decreto-Legge 118/2021 and now codified within the *Codice della Crisi d'Impresa e dell'Insolvenza* (D.Lgs. 14/2019, as amended, most recently by the Correttivo-ter, "CCII"). Consistent with the framing set out in §1.6, the CNC is treated in this guide not as a court-supervised insolvency procedure, but as a fundamentally out-of-court, negotiated framework — one in which judicial intervention is available for specific, discrete purposes (confirming protective measures, authorizing certain acts, verifying particular outcomes) rather than as the ordinary mode of the process.

This chapter is deliberately confined to the CNC itself. The broader hierarchy of instruments available under the CCII once a negotiated resolution proves unattainable — the *accordi di ristrutturazione dei debiti*, the *piano di ristrutturazione soggetto a omologazione* (PRO), *concordato preventivo*, and *judicial liquidation* — is addressed only in §8.9 and §8.10, as escalation context, and is not developed in depth. A foreign parent whose downsizing has progressed to the point where one of those instruments is under active consideration requires dedicated Italian restructuring counsel; the purpose of this chapter is to equip the reader to recognize that inflection point, not to navigate beyond it.

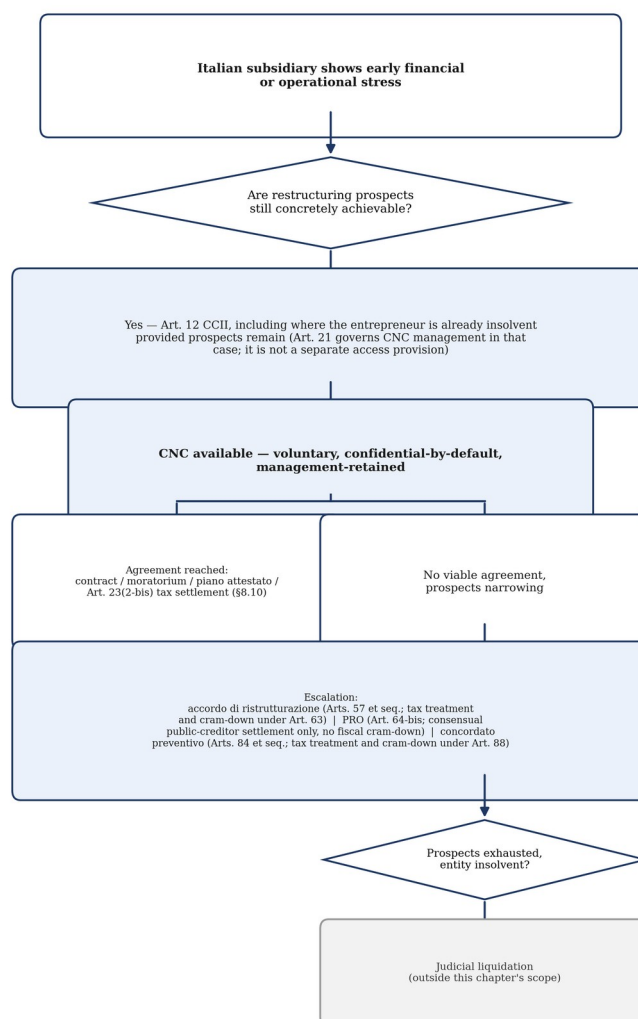


Figure 8.1 — CNC access and process flow

8.1 The CNC as a Governance Instrument, Not an Insolvency Procedure of Last Resort

Three structural features distinguish the CNC from the instruments that follow it in the CCII's hierarchy, and each has direct relevance to a downsizing mandate rather than a full insolvency.

First, the CNC is voluntary and management-initiated. The entity's directors retain ordinary management powers throughout the negotiation, subject to the notification protocol and protective measures discussed in §8.4 and §8.5; there is no court-appointed administrator displacing the board. Second, the CNC is confidential in its baseline form, though not uniformly so — the precise scope of that confidentiality is addressed in §8.5, and a foreign board should not assume blanket secrecy. Third, and most consequentially for the timing argument developed in §8.2, access does not require insolvency.

The access threshold requires precision. Article 12 CCII permits access where the entrepreneur is in a state of squilibrio — patrimonial, economic, or financial imbalance — that renders crisis or insolvency probable, provided concrete prospects of restructuring remain. That is the ordinary gateway, and it is materially lower than the insolvency threshold governing judicial liquidation. The CNC is not categorically closed to an entity that has already crossed into insolvency: Article 21 CCII expressly contemplates the continuation of the CNC where the entrepreneur is insolvent but concrete restructuring prospects remain, confirming that insolvency is not, by itself, incompatible with the framework. Article 21 should be read precisely for what it is — a provision governing management of the CNC in that scenario, not a separate access provision or exception to Article 12. The more precise distinction is functional, not purely temporal: judicial liquidation presupposes insolvency; concordato preventivo is available in a state of crisis or insolvency; and the CNC is available wherever restructuring remains concretely achievable, including in the defined circumstances Article 21 addresses.

 Correction to a common misreading

Do not read the CNC's threshold as "not yet insolvent." Read it as "restructuring is still concretely achievable." An entity that has already tipped into insolvency has not automatically lost access to the CNC — but the later the application, the harder that showing becomes, which is the structural point developed in §8.2.

Read together, these features support the proposition governing this chapter: for a foreign-owned entity undertaking a downsizing that will generate material severance liabilities, contested creditor claims, or a temporary liquidity shortfall of the kind modeled in Chapter 2's worked illustration, early and voluntary engagement with the CNC framework — assessed by Italian counsel against the specific facts — can convert what might otherwise be treated, in hindsight, as a delayed or opportunistic restructuring into a documented process facilitated by an independent expert. This bears on the director-liability exposures addressed in Chapter 6, subject to the limits set out in §8.13: CNC engagement builds a diligence record, but it is not a general safe harbor.

8.2 Why Foreign Groups Wait Too Long

The single largest determinant of whether the CNC delivers the governance value described in §8.1 is not the quality of the expert appointed, nor the sophistication of the restructuring plan negotiated — it is timing. In practice, foreign parents managing an Italian subsidiary systematically delay engagement with the CNC framework well past the point at which the early-warning indicators addressed in §8.3 first become apparent, and the delay is rarely the product of a considered risk assessment. It is the product of a set of instincts that are reasonable in most jurisdictions in which a multinational group operates, and mistaken under Italian law.

The most common of these instincts is the assumption that initiating a negotiated restructuring process is itself a signal of distress that customers, lenders, and employees will interpret as a precursor to insolvency, and that the reputational cost of that signal exceeds the benefit of the process. This assumption overstates the CNC's visibility relative to the later, genuinely public instruments the delay makes more likely — a distinction developed with the necessary nuance in §8.5. A second, closely related instinct is the conflation of the CNC with those later instruments, when the threshold under Article 12 (and, in defined cases, Article 21) is calibrated precisely so the instrument can be used before the entity's position has deteriorated to the point where those later, less favorable instruments become the only options.

A third instinct, specific to foreign-owned entities, is an overconfidence that the parent can fund the Italian subsidiary through its difficulty on an informal basis, without the discipline of a structured process. This instinct is not unreasonable as a matter of corporate finance; it is inadequate as a matter of Italian governance law. Informal, HQ-directed funding decisions taken outside a documented governance process do not by themselves generate liability under Article 2497 c.c. — that provision requires direction and coordination exercised contrary to sound corporate and entrepreneurial management principles, and compensable prejudice — but informality does forfeit the contemporaneous documentation that would otherwise support the entity's position if a creditor or the curatore in a later proceeding challenges the funding decisions in hindsight.

Paradigm shift

The instinct to protect reputation by staying quiet and staying informal is, under Italian crisis law, usually the instinct that produces the public, adversarial outcome it was meant to avoid. Confidential and structured beats informal and silent.

8.3 Access, Eligibility, and the Early-Warning Framework

Access to the CNC is governed by Article 12 CCII (§8.1) and is paired with an early-warning architecture directed at qualified public creditors — principally the Agenzia delle Entrate, INPS, INAIL, and the agente della riscossione — under Article 25-novies CCII. Once specified debt thresholds are exceeded, these creditors must notify the entity. That notification is an invitation to apply, not an automatic legal trigger compelling CNC access. The duty that actually falls on the board at that point derives from Article 2086, second paragraph, c.c. and Article 3 CCII: the obligation to maintain an adequate organizational structure capable of detecting crisis signals in a timely manner, and to assess and document the appropriate response once a signal — whether the Article 25-novies notice or an internally generated indicator — has been received. Agenzia delle Entrate Circolare n. 5/E of 16 July 2026 (Parte I) confirms that these two duties, external notification and internal detection, operate independently and cumulatively.

For a foreign parent, the practical consequence is that not every tax or social-security liability arising in a downsizing triggers Article 25-novies. VAT exposure on an asset disposal or a withholding obligation on severance payments does not, by itself, generate a notification; the relevant debt must go unpaid and cross the specific statutory threshold under the applicable reporting mechanism. The board's obligation to assess and document is triggered by that specific event, not by the underlying tax liability existing in the abstract.

8.4 The Independent Expert: Appointment, Function, and Interaction with the CRO

Access is implemented through a national digital platform. The application does not result in the Chamber of Commerce itself appointing the expert as a single administrative act: the application passes through the platform and the competent secretary-general, and the appointment of the independent expert (esperto indipendente) is made by the commission established under Article 13 CCII, drawing from the statutory register — the expert may be drawn from outside the entity's own region.

The process operates on a defined, not open-ended, timeline:

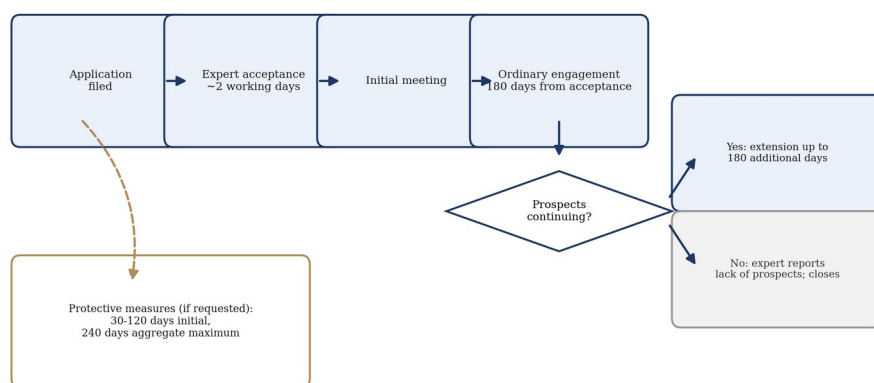


Figure 8.2 — Expert appointment and negotiation timeline

Verification flag

These figures reflect the CCII as amended by the Correttivo-ter. Given the frequency of legislative adjustment to CNC timelines, counsel should confirm current durations before they are relied upon in any client-facing planning document.

The expert's function is advisory and facilitative, not adjudicative — but it is considerably more consequential than pure facilitation. Under Article 21 CCII, directors retain ordinary and extraordinary management power, but must give the expert prior written notice of extraordinary acts and of payments inconsistent with the negotiation or with the entity's restructuring prospects. The expert may formally object. If the entity proceeds regardless and the act prejudices creditors, registration of the expert's dissent becomes mandatory — a public act — and the expert may then seek relief concerning the continuation of any protective measures in place. The expert has no power to approve, reject, or veto ordinary management decisions, and no standing to negotiate directly with the workforce; but the dissent-registration mechanism gives the expert real, documented leverage over conduct the expert considers inconsistent with the negotiation's good faith.

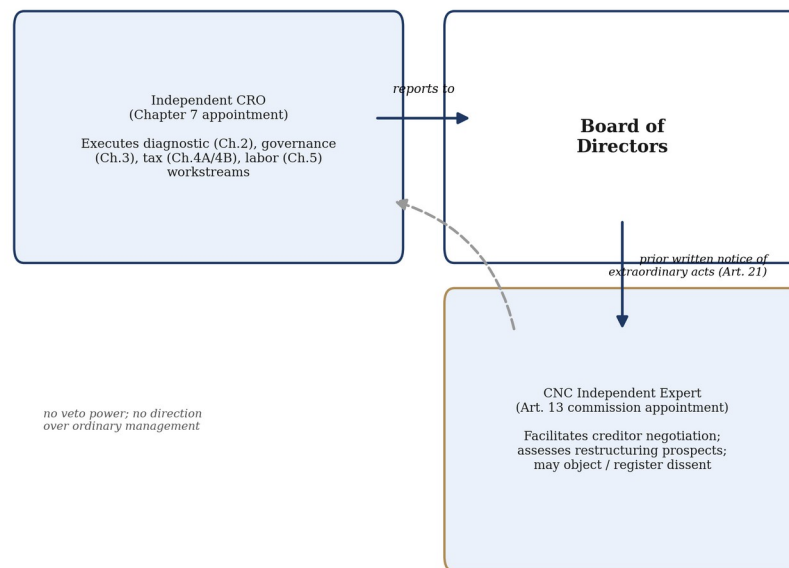


Figure 8.3 — Governance during the CNC

Where an independent CRO has already been appointed under Chapter 7, the expert's role operates alongside, not in place of, that appointment — but one caveat qualifies this: the CRO's own authority is defined by the scope of the mandate the board has granted, not assumed automatically from the title. A board resolution appointing a CRO should specify explicitly which decisions the CRO is authorized to take independently, and should clarify that the CNC expert's advisory role is complementary to, not a substitute for, that mandate.

8.5 Protective Measures and Confidentiality During Negotiation

Protective measures (*misure protettive*) under Articles 18 and 19 CCII become effective from publication in the Companies Register, and remain subject to timely confirmation or modification by the competent tribunal — they do not begin only once a court has confirmed them, and their existence is not itself confidential once requested.

What the measures actually reach, precisely stated: affected creditors are prevented from acquiring unagreed preferential rights over the entity's assets, and from commencing or continuing enforcement or precautionary actions. On the contractual side, Article 18 protects the entity against specified counterparty actions based solely on non-payment of claims predating publication, and only as against creditors covered by the measures — it does not generally invalidate every contractual clause triggered merely by CNC access. Separately, and on a distinct legal basis, an entrepreneur may make a declaration under Article 20 CCII suspending the operation of specified recapitalization and dissolution provisions (including Article 2484, first paragraph, no. 4, c.c.) — this is not an automatic effect of Articles 18–19 protective measures, and requires its own filed declaration.

! What protective measures do not reach

Employees' matured claims — including severance and TFR obligations arising under the collective dismissal process described in Chapter 5 — are expressly excluded from protective measures under Article 18. No protective measure suspends or defers the enforceability of a matured employee claim.

On confidentiality, three distinct layers operate:

Layer	Confidential?
Baseline CNC application, absent any registered act	Not automatically published
Protective-measures request, expert's acceptance, court proceeding number, hearing information, expert dissent registrations, Art. 20 declaration	Published in the Companies Register
Information exchanged between the parties and the expert during negotiation	Bound by a distinct confidentiality duty on participants

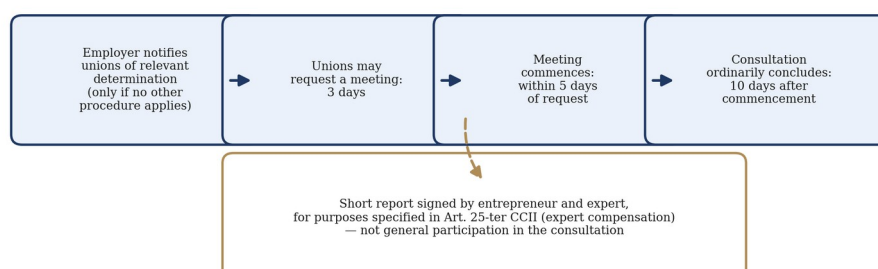
For a foreign parent managing the union-facing communication workstream that Chapter 5 identifies as essential, the practical planning conclusion is this: the CNC application itself can proceed without immediate public visibility, but the moment protective measures are requested — often the point at which the entity most needs them — visibility increases. Communication planning under Chapter 5 should account for that inflection point specifically, rather than assuming confidentiality holds throughout.

8.6 Employee Information and Consultation During the CNC — A Residual Obligation

Article 4, comma 3, CCII imposes, on an employer with more than fifteen employees, an obligation to inform the trade union organizations where "relevant determinations" are to be adopted during the CNC that affect the employment relationships of multiple workers — including determinations concerning work organization or the manner in which work is performed, not only headcount reduction as such.

This obligation is residual, not automatic in every case. Article 4, comma 3, CCII applies only where a different information and consultation procedure is not already provided by law or by the applicable collective agreement. Its relationship with any collective-dismissal procedure under Law 223/1991, any transfer-of-undertaking consultation, or any collectively agreed consultation procedure must therefore be mapped before assuming that a separate CNC consultation applies — it should not be assumed automatically that two cumulative procedures run in parallel.

Where Article 4, comma 3 does apply, the statutory sequence is:



This process, where it applies, qualifies any assumption that the CNC can be conducted without implications for the workforce-communication process governed by Chapter 5. A downsizing that reaches the point of CNC engagement, and crosses the fifteen-employee threshold, should be assessed for whether Article 4, comma 3 applies as a residual obligation — rather than automatically assumed to run alongside whatever collective-dismissal consultation is separately required under Law 223/1991 for the underlying headcount reduction itself.

8.7 Fiscal Incentives: Misure Premiali — Condition by Condition

Article 25-bis CCII does not impose a single, uniform activation condition across all its benefits. Each paragraph carries its own trigger and should not be read as a single undifferentiated incentive package. Reduced to what a CFO's financial model actually needs:

Benefit	Condition
Interest reduction — Art. 25-bis, para. 1	Reduces interest accruing during the relevant period on the entrepreneur's tax debts
Administrative penalty relief — Art. 25-bis, para. 2	Own, distinct conditions, not identical to the paragraph 1 trigger
Separate halving of specified interest and penalties — Art. 25-bis, para. 3	Own, distinct statutory conditions, separate from paragraphs 1 and 2
Extended installment plan — up to 72 months	Available only for specified taxes not yet enrolled for collection, and only following the specific Article 23 outcomes the provision identifies
Extension to 120 installments	Requires demonstrated serious hardship and an application co-signed by the expert
Income-tax treatment of debt reductions / VAT bad-debt adjustments	Addressed separately within Article 25-bis
Reversibility	Several benefits are lost automatically upon a subsequent statutory default or procedural event, including but not limited to liquidation or an insolvency determination

Application caveat

Do not assume any exit-tax or VAT exposure identified under Chapter 4A or 4B automatically qualifies for the installment benefit. Eligibility depends on the specific tax, its collection status, the CNC outcome achieved, and satisfaction of the application requirements above — each must be tested independently.

8.8 Tax Settlement Within the CNC: Article 23, Comma 2-bis

During the CNC itself, an entrepreneur may propose a partial or deferred settlement of tax debt directly to the fiscal agencies and to Agenzia delle Entrate-Riscossione, under Article 23, comma 2-bis, CCII, introduced by the

Correttivo-ter. This mechanism requires: an independent professional's report on the settlement's convenience relative to judicial liquidation; a report on the completeness and truthfulness of the underlying business data; execution by the competent fiscal authority; communication to the expert; filing; and judicial verification, subject to statutory exclusions and termination events. It does not extend, as a general matter, to INPS or other social-security creditors, and it excludes taxes constituting the European Union's own resources.

 Critical clarification — do not confuse this with cram-down

This settlement mechanism operates without the possibility of forced homologation over the tax authority's dissent. Sourced Italian restructuring doctrine confirms explicitly that the cram-down mechanism (cram-down fiscale) does not apply within the CNC. If the tax authority declines the Article 23(2-bis) proposal, the entrepreneur cannot ask a court to impose it. Cram-down becomes available only in two of the downstream instruments addressed in §8.9 — accordi di ristrutturazione (Art. 63) and concordato preventivo (Art. 88) — and even there, only under defined conditions. The PRO's own tax settlement under Article 64-bis is likewise consensual only.

8.9 Where Cram-Down Fiscale Actually Applies — Downstream, Not Within the CNC, and Not Within the PRO

The fiscal cram-down mechanism does not sit within Articles 284-bis, 285, or 286 CCII, which serve a materially different, group-specific function described below. Nor, contrary to a common assumption, does it extend to the Piano di Ristrutturazione soggetto ad Omologazione (PRO).

Article 284-bis governs unified tax and contribution settlement proposals specifically in group restructurings — allowing a single proposal across accordi di ristrutturazione, the PRO, and group concordato preventivo, while preserving the autonomy of each group member's assets and liabilities. It is a group-coordination mechanism, not a general cram-down provision, and it is irrelevant to a single-entity Italian subsidiary proceeding independently of other group restructurings. Articles 285 and 286 concern the mechanics of group restructuring plans and group concordato procedure specifically — again, not a general fiscal cram-down rule.

The actual fiscal cram-down provisions, available only once the CNC has been left behind, sit in Article 63 (for accordi di ristrutturazione, governed generally by Article 57 et seq.) and Article 88 (for concordato preventivo, governed generally by Article 84 et seq.) — each subject to its own specific conditions, and each requiring the independent professional's attestation to address the tax and social-security creditor's treatment as compared to the liquidation alternative.

Article 64-bis, which governs the PRO, permits a consensual tax and contribution settlement drawing on Article 88's procedural framework, but it does not itself provide for forced homologation over a dissenting public creditor. The PRO requires the approval of all creditor classes, and the court has no mechanism under Article 64-bis to substitute for a missing public-creditor consent. A foreign parent evaluating the PRO as a downstream instrument should not assume a dissenting tax authority can be overridden there in the way it can under Article 63 or Article 88.

Circolare n. 5/E identifies the conditions and circumstances in which the Agenzia delle Entrate may oppose or contest homologation under Articles 63 and 88, particularly where it considers the proposed treatment inferior to the relevant liquidation alternative. A going-concern plan — one that preserves a residual Italian operation,

consistent with the guide's governing framing in Chapter 1 — may support a more persuasive proposal in that context, where the plan demonstrates, through reliable valuation and cash-flow evidence, a better recovery for the public creditor than the relevant liquidation alternative. This is a considered, evidence-dependent proposition, contingent on the quality of that evidence rather than a feature of going-concern plans as such.

8.10 Statutory Outcomes of the CNC

Article 23 CCII provides a specific architecture of outcomes:

json — CNC statutory outcomes (Art. 23 CCII)

1. Qualifying contract with one or more creditors or interested parties
2. Moratorium agreement under Article 62 CCII
3. Agreement signed by the entrepreneur, adhering parties, and the expert
4. Restructuring plan under Article 56 CCII (piano attestato di risanamento)
5. Application for homologation of a restructuring agreement
6. Concordato semplificato per la liquidazione del patrimonio
7. Access to another restructuring or insolvency-regulation instrument
8. Separate fiscal settlement under Article 23, comma 2-bis CCII

Note in particular that the CNC does not, as a technical matter, "convert into" an accordo di ristrutturazione. The correct description is that the entity, following the CNC, may apply for homologation of a restructuring agreement as a subsequent, distinct filing. Concordato semplificato is a materially different, liquidation-oriented instrument available specifically where the CNC has been pursued in good faith without producing another viable outcome, and it does not require creditor voting in the manner of ordinary concordato.

8.11 Operational Requirements: Application Documents and Financing Authorizations

A CFO-facing chapter on the CNC is incomplete without the operational documents and authorizations the process actually requires. The Article 17 CCII application must include, among other elements: a draft restructuring plan, a financial plan covering the following six months, an updated statement of the entity's financial position, and a list of creditors. Once inside the process, the Article 21 management protocol described in §8.4 — prior written notice to the expert of extraordinary acts — governs ongoing conduct.

Of particular relevance to a foreign-owned entity: Article 22 CCII allows the Italian entity — not the parent — to seek judicial authorization for specified categories of financing and transfer transactions during the CNC: prededucible financing, shareholder financing, group financing, and the transfer of a business or branch of business (cessione di ramo d'azienda, the subject of Chapter 9). Shareholder financing under Article 22 should be distinguished from an equity contribution or capital increase, which is a different transaction and not the subject of this authorization. For financing, Article 22 authorization is relevant principally to the statutory recognition of prededuction; for a business or branch transfer, it may produce the specific effects the article provides.

What Article 22 authorization does not do

Judicial authorization under Article 22 does not replace the board resolution, shareholder approval where required, or the parent's own governance process. It does not validate the parent's internal decision-making, does not cure defective corporate authority, and does not constitute a general liability defense. A foreign parent contemplating a further capital injection or a branch transfer while a CNC is underway should treat Article 22 authorization as one component — addressing prededuction or the specified transfer effects — of a

properly documented decision, not as a substitute for the governance record Chapter 6 identifies as the primary defense against later liability challenges.

Employees transferred as part of any branch or business transfer executed during or following the CNC remain subject to Article 2112 c.c. in the ordinary way; the CNC framework does not displace the automatic-transfer protections addressed in Chapter 3.

8.12 Choosing Between Voluntary Downsizing and CNC-Assisted Restructuring: A Decision Framework

The decision to pursue the CNC alongside, or instead of, the purely voluntary downsizing instruments described in Chapters 3 through 5 turns on three considerations, each of which the CRO should assess and document at the outset of the mandate:

1. Liquidity position relative to the parent's funding commitment. Where the financial model constructed under Chapter 2's methodology indicates shareholder-funded resources are sufficient to cover the downsizing's full liability profile without approaching the net-equity thresholds that trigger Article 2484 dissolution obligations, the case for CNC engagement is correspondingly weaker.
2. Presence or foreseeability of an Article 25-novies notification, or an internally generated early-warning indicator, which requires the board to assess and document the appropriate response under Article 2086, second paragraph, c.c. — a response that may or may not be CNC engagement specifically, but which must be considered and recorded.
3. Reputational and labor-relations calculus, weighing the layered confidentiality advantage described in §8.5 against the possibility that a defined, negotiated framework offers a more credible platform for creditor and stakeholder engagement than an informal process.

Each of these should be assessed at the outset, not revisited only once the entity's position has deteriorated — the delay dynamic analyzed in §8.2 applies with particular force here.

8.13 What CNC Access Does and Does Not Establish for Liability Purposes

Timely CNC access should not be treated as a principal defense against bancarotta, Article 2497 liability, or defective governance findings by itself.

CNC engagement can produce valuable evidence of timely assessment, transparent planning, and good-faith engagement with creditors. It is not a general safe harbor, and access cannot cure: inadequate organizational structures that predate the process; earlier prejudicial transactions; unjustified cash sweeps; false or incomplete information supplied to the expert or creditors; continuation of loss-generating activity without reasonable restructuring prospects; unlawful parent direction; or criminally relevant conduct. Nor, as §8.2 already noted, does informal parental funding automatically generate Article 2497 liability by itself — the relevant question remains whether direction and coordination were exercised contrary to sound corporate and entrepreneurial management principles and caused compensable prejudice. CNC engagement is evidence that bears on that question; it does not resolve it in the entity's favor by itself.

8.14 Conclusion: Practitioner Takeaways

1. The CNC should be evaluated as a governance instrument at the outset of any downsizing carrying material financial or creditor risk. Access under Article 12 is not limited to entities that have not yet reached insolvency; Article 21 confirms that insolvency is compatible with continuation of the CNC where concrete restructuring prospects remain, though Article 21 itself governs management during the process rather than access to it.
2. Timing is the single largest determinant of CNC value; the instincts that lead foreign parents to delay — fear of signaling distress, conflation with insolvency filing, overconfidence in informal parental funding — work against the entity's own interests under Italian law.
3. Confidentiality operates in layers, not as a blanket protection; the inflection point at which visibility increases is the request for protective measures, and communication planning under Chapter 5 should be built around that specific moment.
4. The independent expert's role is more consequential than pure facilitation — the Article 21 prior-notice and dissent-registration mechanism gives the expert real, documented leverage — but it remains distinct from, and does not substitute for, the independent CRO's governance mandate under Chapter 7.
5. The Article 4, comma 3 employee-consultation obligation is residual, applicable only where no other statutory or collectively agreed information and consultation procedure — including any procedure under Law 223/1991 — already governs the same determination; the relationship must be mapped, not assumed cumulative.
6. Cram-down fiscale does not apply within the CNC, and — contrary to a common assumption — does not apply within the PRO either. The CNC's own tax-negotiation tool is the non-cram-down settlement under Article 23, comma 2-bis; forced homologation over a dissenting tax authority becomes available only under Article 63 (accordi di ristrutturazione) and Article 88 (concordato preventivo), under conditions Circolare n. 5/E identifies.
7. CNC outcomes are not guaranteed and depend materially on the expert's engagement, the creditors' disposition, and the entity's own state of preparation.
8. Article 22 court authorizations address prededuction for financing and the specified effects of an authorized business or branch transfer — directly relevant to the intercompany funding and branch-transfer structures addressed in Chapters 3 and 9 — but they do not validate the parent's internal decision-making, cure defective corporate authority, or substitute for the board's own governance process.
9. CNC access is evidence relevant to a board's diligence; it is not a general liability safe harbor and cannot cure defects that predate or exist independently of the process.

Machine-Readable Chapter Index

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The Asset Deal Alternative

Cessione di Ramo d'Azienda

9.0 Introduction: From Negotiation Venue to Execution Vehicle

Chapter 8 established that the *Composizione Negoziata della Crisi* is a negotiation venue, not an outcome in itself: the CNC creates the confidential, protected space in which a downsizing carrying meaningful financial or creditor risk can be worked out, but §8.6 flagged that the CNC's own toolkit does not include a distinct legal mechanism for actually separating a function, a plant, or a business line from the rest of the Italian entity and placing it in different hands. That separation can, in principle, be executed through several vehicles — a sale of individual assets, a contribution of the business or branch under Article 176 TUIR, a demerger or partial demerger, a lease or usufruct of the *azienda*, or a share sale following an internal carve-out. This chapter addresses the vehicle a foreign parent will encounter most frequently in practice: the *cessione di ramo d'azienda*, the transfer of a going-concern branch of the business under Articles 2555 to 2560 of the Civil Code. Where the alternative structures are relevant, they are noted; they are not developed here, since each carries its own body of civil, corporate, and tax analysis outside this guide's scope.

Scope note

This chapter treats the branch sale as the leading case, not the exclusive one. Chapter 2's diagnostic exercise, which classifies every asset and liability as surviving-and-transferring, surviving-and-remaining, or terminating, is the correct starting point regardless of which vehicle ultimately carries the transaction.

The chapter draws on the diagnostic classification built in Chapter 2, the branch-transfer treatment already introduced at §3.5 in the corporate governance pillar, the labor mechanics of Chapter 5, the liability framework of Chapter 6, and the CNC context of Chapter 8 — synthesizing them into the specific legal, fiscal, and contractual architecture of a branch sale. It closes, at §9.10, on a point the chapters that precede it have been building toward without stating outright: that the branch sale is ultimately an accounting exercise executed through a legal instrument, not a legal transaction with financial consequences attached to it.

9.1 The Azienda and Ramo d'Azienda: Three Related but Distinct Tests

A single transaction is examined through three separate statutory lenses, each administered by a different authority and each capable, in principle, of reaching a different conclusion about whether a genuine “branch” exists:

- The civil-law test under Article 2555 c.c., which asks whether the transferred complex is an organized set of assets capable of pursuing an economic purpose — the test relevant to the mechanics of Articles 2556–2560 discussed at §9.3.
- The employment-law test under Article 2112 c.c. and Directive 2001/23/EC, which asks whether an “economic entity retaining its identity” has transferred — the test that determines whether the workforce moves automatically, discussed at §9.4.

— The fiscal test applied for VAT-exclusion and registration-tax purposes, discussed at §9.6.

These three tests share a common factual core — organizational coherence, functional autonomy, and the capacity to operate independently — but they are not identical, and a civil court, a labor tribunal, and the tax authorities can in principle examine the same facts and reach different conclusions for their respective purposes. The employment-law test carries its own body of case law. The Corte di Cassazione consistently requires genuine functional autonomy at the transfer, established through operational evidence — an organization chart, a standalone P&L, dedicated management, and identifiable customer or supplier relationships — rather than through the transaction documents alone. A company may legitimately reorganize its operations in the period leading up to a sale; the point at which this becomes dangerous is where the purported branch is, in substance, a label or an employee grouping incapable of performing an autonomous economic function, assembled to route personnel or assets toward a transaction rather than reflecting a unit that already functioned as such. Article 2112, paragraph 5, refers to the autonomous unit “as identified by the transferor and transferee at the time of transfer” — the parties do have a role in defining the perimeter — but case law reads that definitional freedom together with the requirement of genuine pre-transfer autonomy, not as license to construct it retroactively. An autonomous branch, in this employment-law sense, may also be predominantly people-based; it does not always require a complete, standalone set of physical assets, which matters for service, engineering, or back-office functions divested without an accompanying plant.

Figure 9.1 — Testing Functional Autonomy Under Article 2555 c.c.

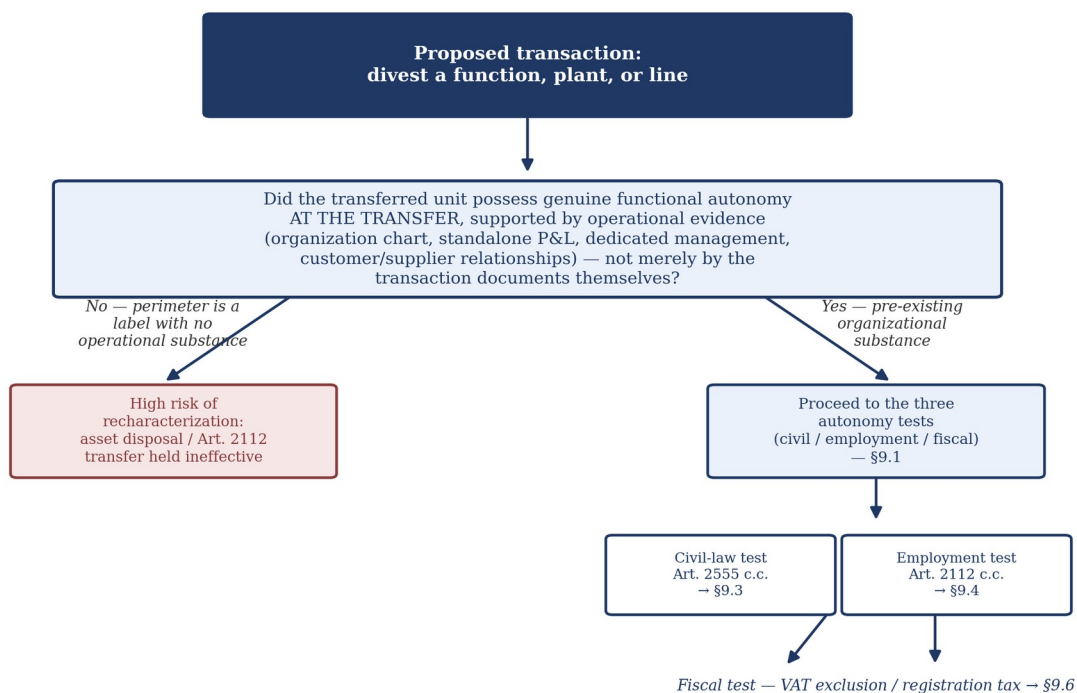


Figure 9.1 — Testing functional autonomy under Article 2555 c.c. and its downstream consequences across the three tests.

Consequence if the autonomy test fails

Where the purported branch fails the functional-autonomy test, the intended employment transfer can itself be held ineffective. Because Article 2112 does not require the employees' individual consent to a valid transfer, an ineffective transfer does not automatically convert into a dismissal claim. The employment relationship may instead be found to have continued, uninterrupted, with the transferor — generating reinstatement and back-pay exposure for the seller — while the buyer faces separate exposure arising from its actual use of the personnel during the period the relationship was mistakenly treated as transferred. Counsel should model this as a continuing-employment contingency, not a severance contingency.

The diagnostic classification performed in Chapter 2 — identifying which tangible assets, intangible assets, and continuing liabilities are surviving-and-transferring — should be treated as contemporaneous evidence of the branch's pre-existing autonomy across all three tests, to be preserved in the CRO's documentation file addressed in Chapter 7.

9.2 Comparative Analysis: Liquidation, Branch Sale, and Share Deal

The choice among liquidation, a branch sale, and a share deal is rarely a legal question in the first instance; it is a valuation and risk-allocation question that the legal analysis then implements. The comparison below is a screening tool, not a decision rule, and the qualifications in each cell matter as much as the general tendency they describe.

Objective	Voluntary Liquidation	Asset Deal (Ramo d'Azienda)	Share Deal
Preserve customer relationships	Weak on itemized asset-by-asset liquidation; a going-concern sale within the procedure can preserve continuity (Art. 2558 applies to that sale on the same terms as any branch sale)	Strong — Art. 2558 automatic succession, subject to relevance and any withdrawal right	Strong — entity and contracts unchanged
Transfer employees without dismissal	Not automatic on itemized liquidation; a liquidator selling the business as a going concern can trigger Art. 2112 continuity on the same terms as a voluntary sale	Automatic in principle — Art. 2112 continuity, subject to the functional-autonomy test (§9.1)	Automatic — entity and staff unchanged
Going-concern price premium	Available only where structured as a going-concern sale within the procedure, not on item-by-item liquidation	Available — earning capacity capitalized	Available, priced against full-entity risk
Buyer's exposure to legacy liabilities	Not applicable in an ordinary third-party sale	Governed by Art. 2560 c.c. and Art. 14, D.Lgs. 472/1997, each independently qualified (§9.3, §9.6); employment, environmental, social-	The legal entity retains all liabilities; the buyer acquires the resulting economic exposure through ownership of the entity

Objective	Voluntary Liquidation	Asset Deal (Ramo d'Azienda)	Share Deal
		security, product, permit, and privacy exposure each require separate analysis	
Execution timeline	Extended — sequential procedure	Not a single closing date in practice: Art. 47 union consultation (§9.4) and, where applicable, merger-control or Golden Power clearance (§9.7) typically precede signing or closing	Single closing date, subject to the same regulatory clearances where applicable
Fiscal treatment for the seller	Ordinary asset-by-asset taxation	VAT-excluded; asset-specific registration tax (§9.6); capital-gain deferral available only where the Art. 86 TUIR three-year holding condition is met	Capital-gains regime on shares; participation exemption under Art. 87 TUIR is available only where the seller is itself an Italian taxable person meeting the PEX conditions — a foreign parent's own taxation depends on its home jurisdiction and any applicable treaty

Practice observation, not a legal conclusion: buyer appetite in a downsizing context is typically highest for a branch sale and lowest for a share deal, reflecting the risk-allocation differences above — but this varies by sector, buyer type, and the specific liability profile of the entity.

For the foreign parent, the illustrative economics typically still favor the branch sale whenever the divested activity retains commercial value to a buyer. Where no buyer exists — because the activity has no standalone commercial value, or because the diagnostic exercise reveals continuing liabilities a buyer will not accept even at a discount — liquidation, or in a financially distressed scenario the CCII-supervised sale discussed at §9.8, becomes the default.

9.3 Transfer Mechanics: Contracts, Receivables, Form, and Creditor Protections

Form and filing (Art. 2556 c.c.)

A branch transfer requires, for evidentiary and filing purposes, a public deed or an authenticated private deed, with additional formalities where the branch includes real estate or other registered assets. The deed must be filed with the competent Companies Register within the statutory deadline — a procedural precondition that HQ legal teams accustomed to private-instrument closings in other jurisdictions frequently underestimate in their execution timeline.

Contract succession (Art. 2558 c.c.)

Contracts pertaining to the branch — other than those of a strictly personal character — transfer to the buyer automatically, without the counterparty's consent, unless the parties agree otherwise. The counterparty retains a right to withdraw within three months of becoming aware of the transfer if it can show just cause.

The perimeter schedule is evidence, not the source of legal effect

Article 2558 operates by operation of law according to whether a contract actually pertains to the transferred business — not according to whether the parties listed it in the transaction schedule. A contract omitted from the schedule by drafting oversight may still transfer if it substantively belongs to the branch; conversely, listing a contract does not transfer it if it does not actually pertain to the branch or requires a consent the parties have not obtained. The schedule is strong evidence of the parties' intended perimeter and central to the functional-autonomy analysis of §9.1 — but it is evidence, not itself a source of legal effect. The same substance-over-form principle applies to the employee perimeter: the parties cannot freely assign an employee into or out of the transferred branch if that employee's actual organizational function points elsewhere.

Receivables (Art. 2559 c.c.)

Receivables pertaining to the branch transfer to the buyer, with third-party effectiveness governed by registration of the transfer deed rather than the ordinary civil-code notice requirement applicable to an isolated assignment of credit — a mechanical advantage of the branch-sale structure worth noting explicitly in the diligence file. A debtor who pays the seller in good faith before becoming aware of the transfer can nonetheless remain validly discharged. Notices to debtors and revised payment instructions should therefore still be issued as a practical matter at closing, even though the statutory transfer of effectiveness does not itself depend on ordinary assignment notice.

Creditor protection (Art. 2560 c.c.)

The seller remains liable for pre-transfer debts unless creditors consent to release it. The buyer becomes jointly liable for those same debts, but only for the ones resulting from the mandatory accounting books — a limitation that makes accurate bookkeeping in the period preceding the sale a direct determinant of the buyer's exposure.

Environmental liability

Legislative Decree 152/2006 places remediation responsibility on the party that caused the contamination, not automatically on a subsequent innocent acquirer. The Consiglio di Stato confirmed this position in its decision of 4 August 2025, No. 6885: an innocent owner is not, merely by virtue of ownership, responsible for full site remediation. What the innocent owner does face is a narrower set of obligations — notification duties on discovering contamination, preventive-measure obligations to contain further spread, a real charge (*onere reale*) and special privilege that can attach to the property up to its value, and consequent impairment of the asset's value even absent a personal remediation obligation. The buyer can also become independently liable through its own subsequent conduct, or through liabilities it contractually assumes in the sale documents. Diligence and drafting should therefore separate statutory polluter liability, which does not travel with ownership alone, from property-level economic exposure and preventive duties, which do attach to the acquirer, and from any liability the buyer chooses to assume contractually — typically priced through a dedicated indemnity or escrow rather than assumed silently.

9.4 Employment Treatment: Article 2112, the Article 47 Consultation Procedure, and TFR

Article 2112 c.c., implementing Directive 2001/23/EC, governs the treatment of employees assigned to the transferring branch: employment relationships transfer automatically, on the same terms and with full seniority recognition, without requiring individual consent. Three further mechanics are essential to an accurate action plan.

The Article 47 union consultation procedure (Law 428/1990)

Where more than fifteen employees are employed in the transferor's overall business — including where only a branch is being transferred — the transferor and transferee must jointly notify the relevant trade union representatives, no later than twenty-five days before the transfer is perfected or before any earlier binding agreement is reached, whichever comes first. The notification must cover the transfer date, its reasons, the legal, economic, and social consequences for the employees, and the measures envisaged for them. The unions have seven days from receipt to request a joint examination; if requested, the parties must commence consultation within a further seven days; the consultation obligation is exhausted after ten days if no agreement is reached. Exhaustion of the consultation sequence does not by itself shorten the twenty-five day minimum notice period: signing or an earlier binding commitment may occur only once both the applicable twenty-five day minimum and any requested consultation have been completed or exhausted, whichever falls later.

Figure 9.2 — Article 47, Law 428/1990: Notification and Consultation Timeline

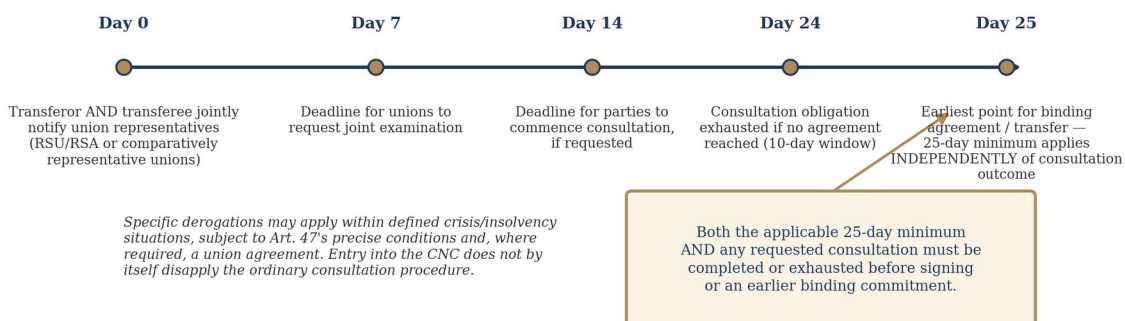


Figure 9.2 — Article 47, Law 428/1990: the notification and consultation timeline, with the independent 25-day minimum.

Failure to observe the procedure does not, as a general matter, invalidate the underlying transfer, but it can constitute anti-union conduct actionable under Article 28 of the Workers' Statute, exposing the parties to injunctive relief and reputational cost of exactly the kind Chapter 5 identifies as a downside of poor process discipline. Specific derogations may apply in defined crisis and insolvency situations, subject to Article 47's precise conditions and, where required, a union agreement — entry into the CNC does not by itself disapply the ordinary consultation procedure.

TFR mechanics and the Fondo di Tesoreria

The buyer generally becomes responsible for TFR obligations relating to service rendered before the transfer, but the financial mechanics are a reconciliation exercise rather than a single balance migration. Depending on company size and the employee's own election, accrued TFR may sit in the employer's own accounts, may have been contributed to INPS's Fondo di Tesoreria, may have been allocated to a supplementary occupational pension scheme, or may have been advanced to the employee, pledged, or otherwise encumbered. Contribution to the Fondo di Tesoreria is mandatory only above a size threshold that changed materially for 2026: under INPS Circolare n. 12 of 5 February 2026, implementing the 2026 Budget Law (Law 199/2025), the threshold is 60 employees (annual average) for 2026–2027, reverting to the ordinary 50-employee threshold for 2028–2031, and falling to 40 employees from 2032, with separate rules for newly established employers and for employees already transferred from an employer subject to the Fund.

Verify before closing

The Fondo di Tesoreria threshold is a recently reformed, date-sensitive rule. Confirm both the transferor's and the transferee's Fund status for the relevant year — based on the average workforce of the preceding calendar year — against INPS's current guidance before finalizing the TFR reconciliation.

A seller-buyer contract can allocate the economic burden of TFR between the parties through price adjustment or indemnity, but cannot by itself extinguish the employee's underlying statutory entitlement. The diagnostic exercise from Chapter 2 should therefore produce an employee-by-employee schedule, not an aggregate figure, covering: gross accrued TFR; the Fondo di Tesoreria balance, if applicable; any pension-fund allocation; advances taken; any unpaid-contribution exposure; and accrued but unpaid holiday, bonus, and other entitlements.

Collective agreements and the Article 2119 resignation right

Article 2112 also governs continuation of the applicable national, territorial, and company collective bargaining agreements post-transfer, with replacement permitted only under defined conditions, and gives each transferred employee the right to resign with the effects of resignation for just cause under Article 2119 c.c. if their working conditions undergo a substantial change within three months of the transfer — a contingent cost the buyer's workforce model should price in explicitly rather than treat as a remote tail risk.

9.5 Corporate Approvals

Before execution, the seller's counsel should confirm that the transaction has been authorized at the correct corporate level, not merely by whichever signatory holds general operational authority. For an S.r.l., a sale that substantially alters the corporate purpose or materially affects shareholders' rights — most clearly where the divested branch is the company's sole or principal operating activity — can require a shareholders' decision under Article 2479, paragraph 2, no. 5, c.c., rather than resting on board authority alone. Where the branch is being sold intragroup, the correct governance test is not a single, generalized “related-party” regime — for an ordinary unlisted S.r.l., no such uniform regime exists — but rather a specific review of directors' conflicts of interest, the direction-and-coordination requirements of Articles 2497 and 2497-ter c.c., the corporate interest and compensatory-advantage analysis those provisions require, the articles of association, any internal

reserved-matters or related-party policy the group has adopted, and any listed- or regulated-company rule that may separately apply to the parent. This analysis belongs alongside the board-process documentation already required under Chapter 3's governance pillar and should be completed before signing, not discovered during the buyer's diligence.

9.6 Fiscal Regime

VAT exclusion and asset-specific registration tax

A branch transfer satisfying the fiscal test at §9.1 falls outside VAT under Article 2, paragraph 3, letter b), Presidential Decree 633/1972. In place of VAT, the transaction is subject to registration tax under Presidential Decree 131/1986, applied separately to the branch's constituent components rather than to a single aggregate value. Agenzia delle Entrate Circolare n. 2/E of 14 March 2025 confirms that where the parties allocate value among goodwill, real estate, equipment, inventory, receivables, and intellectual property, the applicable registration-tax rates apply separately to each component, and assumed liabilities affect the taxable base. The valuation exercise should therefore produce an explicit allocation schedule across these categories, not a single branch-level figure. An independent valuation is prudent risk management, particularly against reassessment risk, but is not a general statutory requirement in every transaction.

Capital gains

The difference between sale price and tax basis is a taxable gain, ordinarily subject to IRES. Article 86 TUIR permits spreading the gain over up to five fiscal years, but only where the branch has been held for at least three years. Where the seller expects to liquidate the Italian entity before the instalment period runs its course, the deferral may be commercially impractical regardless of its legal availability. The full tax model should also address IRAP consequences, the availability and any limitation of carried tax losses, registration, mortgage, and cadastral taxes on any transferred real estate, intragroup pricing under Article 110(7) TUIR where the buyer is a group affiliate, and the Article 176 TUIR tax-neutral contribution as a possible alternative structure. Treatment of Industria 4.0/5.0 credit preservation on transferred equipment and incentive-clawback exposure is addressed at §4B.6 and is not repeated here; this section is confined to the taxes specific to the branch-sale mechanism itself.

Buyer's tax joint liability (Art. 14, D.Lgs. 472/1997)

The buyer's liability for the seller's tax debts relating to the branch is subsidiary — enforcement against the seller must be attempted first — capped at the value of the branch, and limited to debts appearing in the tax authorities' records as of the transfer date for the transfer year and the two preceding years; it can become unlimited where the transfer is found to be fraudulent, structured to circumvent tax collection. The certificate disclosing outstanding assessments, obtainable in advance from the tax authorities, is strongly advisable practice — a negative certificate, or the authorities' failure to issue one within forty days, produces a statutory release from this liability, subject to the fraud exception — but obtaining it is prudent risk management, not a legal precondition to closing.

The CNC and CCII exclusion

Article 14, paragraph 5-bis, of D.Lgs. 472/1997, as amended and extended by D.Lgs. 87/2024, excludes the ordinary Article 14 buyer-liability regime for transfers executed within a CNC or another CCII crisis-regulation instrument, subject to the fraud exception and transitional rules whose application depends on when the underlying tax violations were committed. This is a meaningful incentive toward the CNC route discussed at §9.8, but its transitional operation is not uniform across all CNC transfers, and a specific tax opinion — rather than a general assumption that CNC transfers are tax-debt-free — should be obtained before pricing this benefit into a transaction.

9.7 Regulatory Clearances: Merger Control and Foreign Investment Screening

Merger control

Where the branch's turnover and the buyer's group turnover exceed the applicable thresholds, the transaction may require clearance under the EU Merger Regulation or, below those thresholds, under the Italian regime administered by the AGCM. As of the 2026 thresholds published by the AGCM, Italian notification is generally required where the parties' combined aggregate Italian turnover exceeds €595 million and at least two of the parties individually exceed €36 million in Italian turnover; these figures are adjusted periodically and should be verified against AGCM's current published thresholds at the time of any given transaction rather than assumed static. Even where the ordinary thresholds are not met, AGCM retains power to require notification of certain below-threshold transactions where at least one of the ordinary thresholds is met, or where the parties' combined worldwide turnover exceeds €5 billion, and concrete competition concerns are identified. A transaction assessed as too small to require notification under the ordinary thresholds alone should still be screened against this call-in power where the buyer is a significant sector player — the competitor-buyer scenario flagged at §9.0. An intragroup transfer that does not change ultimate control is not ordinarily a “concentration” for these purposes, though other regulatory rules can still apply.

Golden Power

Italy's foreign investment screening regime under Law Decree 21/2012, as amended, is not triggered by buyer nationality alone. The correct screen crosses the sector and specific asset classification of the transferred activity — energy, transport, communications, critical infrastructure, semiconductors, artificial intelligence, and defense-adjacent technology among the categories most frequently implicated, though the statutory and implementing-decree list is illustrative rather than exhaustive and evolves — against the buyer's control profile, which can bring EU-domiciled and, in some categories, even Italian buyers within scope, not only non-EU acquirers. A foreign parent should map the branch's actual activity against the current statutory and implementing-decree categories, confirm the buyer's control chain, and identify the applicable notification deadline and standstill or closing-condition mechanics — including the possibility of an informal pre-notification consultation with the reviewing authority — well before signing. Failure to notify where required carries significant sanctions, including potential nullity of the transaction.

9.8 The Asset Deal Within the CCII Framework

Chapter 8 identified the branch sale as one outcome the CNC negotiation can produce (§8.6). The mechanics available within a CCII-supervised process differ from an ordinary voluntary sale in substance, not merely in venue or timeline. Article 22 CCII empowers the court, within a CNC, to authorize a business or branch transfer on terms that relieve the buyer of the ordinary Article 2560, paragraph 2, debt-succession consequence — but only where the statutory conditions for CNC access and for the Article 22 authorization are independently satisfied, including the transaction's functionality to business continuity, the protection of creditor interests, and adherence to competitive-process principles the court will assess directly. In liquidazione giudiziale, Article 214 CCII similarly and ordinarily excludes the buyer's responsibility for the business's pre-transfer debts unless the parties agree otherwise. Article 2112's employment-continuity rule remains separately relevant in both settings and is not displaced by either regime.

Figure 9.3 — Choosing the Execution Track: A Conditions-Based Decision, Not a Sequence

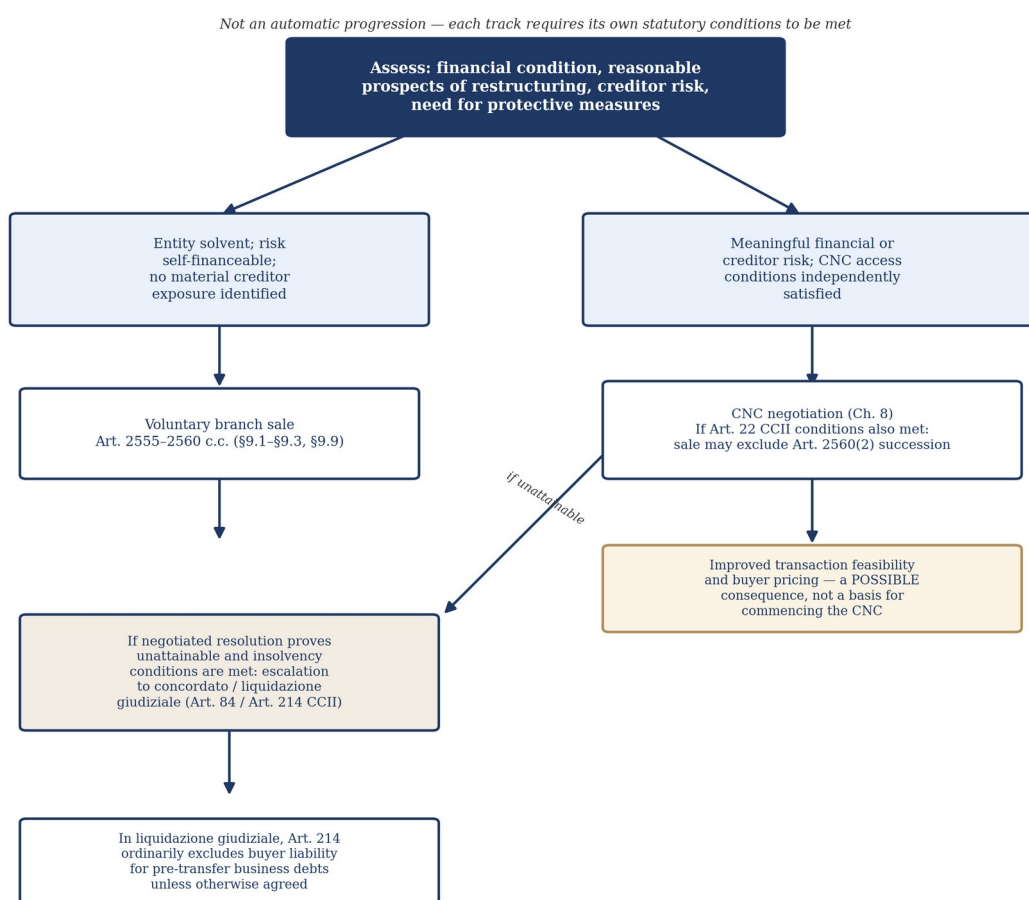


Figure 9.3 — The voluntary, CNC, and judicial tracks are conditions-based alternatives, not sequential stages.

The Article 22 mechanism is a consequence, not a strategy

Where the statutory conditions for CNC access and Article 22 authorization are independently satisfied, the potential exclusion of Article 2560(2) liability may improve transaction feasibility and buyer pricing. It is not, by itself, a basis for commencing a CNC. A foreign parent should evaluate the CNC route on its own statutory merits — financial condition, reasonable prospects of restructuring, creditor risk — and treat the Article 22 debt-relief mechanism, together with the Article 14(5-bis) tax-liability exclusion discussed at §9.6, as a factor that can improve the economics of a branch sale genuinely undertaken within the CNC, not as a liability-

The CNC's confidential negotiation record, referenced in Chapter 8, remains valuable evidence of good-faith, diligent conduct for the liability framework in Chapter 6 — but its evidentiary weight, and the conditions under which it becomes accessible to third parties or a later court, require case-specific analysis and should not be assumed to be automatically dispositive.

9.9 Business Transfer Agreement Drafting and Deal Mechanics

The Italian market convention refers to this agreement as a business transfer agreement (BTA) rather than a share purchase agreement, to avoid the ambiguity an “SPA” label invites in a transaction that transfers assets and contracts rather than shares.

Perimeter schedules

The perimeter schedule remains the most consequential drafting exercise, serving as the primary evidentiary record of the functional-autonomy analysis at §9.1 — but, consistent with §9.3, it is evidence of the parties' intent and the branch's actual composition, not itself the source of legal transfer effect. The diagnostic classification from Chapter 2 should map directly onto this schedule.

Representations, warranties, and indemnification

Representations and warranties customarily place heavier emphasis on labor and tax matters than the equivalent US or UK market standard, reflecting the joint-liability exposure discussed at §9.3 and §9.6 and the environmental exposure discussed at §9.3. Indemnification provisions typically carve out this statutory exposure for treatment outside the general warranty cap.

Deal mechanics

Conditions precedent should reference completion of the Article 47 consultation timeline (§9.4) and any merger-control or Golden Power clearance identified under §9.7. Where a contract within the perimeter is of a strictly personal character or is otherwise excluded from automatic succession, or where a counterparty holds a contractual consent right independent of Article 2558, the BTA should address that consent as a condition precedent directly — and, separately, allocate the risk that a counterparty validly exercises its statutory Article 2558 withdrawal right after closing, since a valid exercise of that right terminates the contract rather than requiring the counterparty's consent to anything. Advance waivers should be sought for commercially essential contracts wherever feasible. The choice between a completion-accounts mechanism and a locked-box structure determines how the working-capital and TFR reconciliation at §9.4 is finalized. Indemnity escrow or holdback should be sized against the carved-out tax and environmental exposure specifically, not folded into a generic warranty cap. Warranty and indemnity insurance is available for branch sales, but its availability and exclusions are highly transaction-specific — underwriters scrutinize the perimeter schedule and statutory joint-liability exposure closely, and coverage terms should not be assumed to mirror a share-deal quote.

Transitional Services Agreements

A branch sale rarely severs cleanly on the closing date. Shared IT, ERP, payroll, accounting, procurement, and treasury infrastructure will typically need to continue serving the divested branch for a defined period while the buyer stands up its own systems. A TSA, negotiated in parallel with the BTA, should define the specific services, duration — commonly three to twelve months, with defined extension mechanics — termination rights per service line as migration completes, and data-protection terms governing the buyer's continued access to seller systems. Pricing is transaction-specific: cost-plus is a common but not universal convention, and the applicable transfer-pricing and VAT treatment of intragroup or cross-border TSA charges should be confirmed rather than assumed.

Closing deliverables checklist

Article 47 consultation closed or exhausted, respecting the independent 25-day minimum; corporate approvals obtained at the correct level (§9.5); notarial deed executed and filed with the Companies Register (Art. 2556); Article 14 tax certificate obtained or the 40-day period elapsed; sector permits and authorizations transferred or reissued; merger-control and Golden Power clearances obtained where applicable; employee-by-employee TFR / Fondo di Tesoreria reconciliation completed; debtor notices issued under Article 2559; GDPR notices issued to affected data subjects; TSA executed and operational; physical handover of the site and assets documented; and an opening balance sheet for the divested branch agreed with the buyer.

9.10 Why the Asset Deal Is Ultimately an Accounting Exercise, Not Merely a Legal Transaction

Each section of this chapter points to the same underlying requirement: a branch sale succeeds only when the legal, accounting, tax, and operational perimeters are expressly reconciled — not necessarily identical, since legitimate reasons can cause them to diverge, but reconciled so that every divergence is understood, priced, and documented rather than discovered during a dispute. The functional-autonomy analysis of §9.1 depends on organizational facts that predate the transaction. The comparative economics of §9.2 depend on carve-out financial statements — allocating shared overhead, intercompany charges, and corporate-level costs to the branch on a defensible basis. The creditor-protection analysis of §9.3 depends on the completeness of the mandatory accounting books. The TFR reconciliation of §9.4, the asset-specific registration-tax allocation of §9.6, and the working-capital adjustment embedded in the BTA's pricing mechanism at §9.9 are all, at bottom, accounting determinations that acquire legal consequences once fixed in the transaction documents.

A poorly defined branch does not merely reduce value; it threatens the legal characterization of the transaction across all three tests identified in §9.1 simultaneously. Avoiding that outcome requires someone positioned to coordinate the diagnostic classification of Chapter 2, the carve-out financials and cost allocation this chapter describes, the working-capital modeling, the multi-layered tax exposures of §9.6, and the labor mechanics of §9.4 into a single, internally consistent record — while legal counsel, indispensable throughout, structures and documents the result rather than defines it from a standing start. This is the specific, demonstrable competence an independent dottore commercialista acting as CRO brings to a downsizing that a legal team alone, however capable, does not: not a substitute for legal counsel, but the party positioned to ensure that what counsel documents is a transaction whose books, taxes, and operations were coherent before the drafting began.

Chapter 10 turns from the single-branch transaction to the portfolio-level question a foreign parent managing more than one Italian site must resolve: how to sequence and prioritize divestments — asset deals among them — across multiple functions or locations without forfeiting the negotiating leverage a coordinated approach preserves.

Appendix 9-A — Machine-Readable Reference Block

The block below indexes the chapter's operative rules for downstream reference. It states current law only; it is not a substitute for the narrative analysis above and does not itself constitute legal or tax advice.

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    "Art_2119_cc": "employee resignation for just cause if conditions substantially change within 3 months",
    "Art_2479_co2_n5_cc": "shareholder decision may be required for S.r.l. where sale affects corporate purpose",
    "Art_47_L428_1990": "joint transferor/transferee notification; threshold based on transferor's overall workforce (>15); 25-day minimum notice runs independently of the 7+7+10 consultation sequence",
    "Art_14_Dlgs472_1997": "buyer tax joint liability: subsidiary, value-capped, record-date-limited (transfer year + 2 prior years), unlimited if fraudulent; certificate advisable, not a legal precondition",
    "Art_14_co5bis_Dlgs472_1997": "as amended and extended by D.Lgs. 87/2024 - excludes ordinary buyer tax liability for CNC/CCII transfers, subject to fraud exception and transitional rules",
    "Art_86_TUIR": "capital gain deferral up to 5 years, conditional on 3-year minimum holding period",
    "Art_22_CCII": "court may authorize CNC sale free of Art. 2560(2) debt succession, subject to independently satisfied statutory conditions (continuity, creditor protection, competitive process)",
    "Art_214_CCII": "liquidazione giudiziale sale ordinarily excludes buyer liability for pre-transfer business debts unless otherwise agreed",
    "Dlgs_152_2006": "polluter-pays principle; innocent owner faces notification/preventive duties and property-level (onere reale) exposure, not automatic remediation liability - Consiglio di Stato, 4 Aug 2025, No. 6885",
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THE GLOBAL CFO'S GUIDE TO ITALIAN DOWNSIZING AND EXIT

Chapter 10

Multi-Site Portfolio Rationalization

10.0 Introduction

PARADIGM SHIFT

A multi-site rationalization is not a legal project that happens to touch several locations. It is a capital allocation exercise, executed through legal instruments that differ depending on which entity, which province, and which employer relationship each site sits under.

Every pillar chapter of this guide has been developed against the implicit case of a single site or function undergoing downsizing. For a meaningful share of this guide's readership, the underlying decision is not single-site at all: a foreign parent rationalizing its Italian footprint frequently holds several sites, and the question is not "how do we downsize this site" but "which of these do we cut, in what order, financed by what, governed by whom, and — critically — held by which legal entity."

The mechanics developed in Chapters 3 through 9 remain the tools; they are not, by themselves, the strategy — and they do not automatically apply uniformly across a portfolio, because the legal and factual perimeter differs site to site. Before any prioritization, sequencing, or financial optimization exercise can be run, that perimeter has to be mapped.

10.0A Mapping the Legal Perimeter Before Ranking the Sites

Before the prioritization matrix in §10.1 is populated, the CRO's office should build a perimeter record for every site in scope, covering:

- Legal owner and employing entity — the same Italian *società* as the other sites in scope, a separate Italian subsidiary, or a branch/permanent establishment of a non-Italian Group entity.
- Province and production unit (*unità produttiva*) classification for labor-law purposes.
- Assets, employees, contracts, and permits attaching specifically to that site.
- Shared functions and intercompany dependencies — IT, finance, HR, or logistics functions shared across sites that will need separation if the sites diverge in fate.
- Proposed route for the site: closure, internal transfer, going-concern branch sale (Chapter 9), asset sale, or share sale.
- Approving corporate body — which board holds decision authority, and under what delegated powers.
- Tax identity and fiscal-consolidation status of the owning entity.
- Union, EWC, and consultation perimeter applicable to that entity and site.

- Environmental ownership and operator history — who caused, and who currently owns, any legacy contamination.
- Secured financing, guarantees, and lender consents attaching to that site or entity.

PERIMETER TEST — Article 24 Threshold Logic

Site identified as rationalization candidate

- Same Italian employer entity as other sites?
- IF YES: confirm Art. 24 threshold test — employer >15 employees AND ≥5 intended dismissals AND 120-day window AND same production unit/province
- IF NO (separate subsidiary): no automatic aggregation. Group-wide aggregation requires an affirmative basis — unified employment centre, joint employer, sham division, or fraudulent structure — not merely common ownership or a shared plan
- IF branch/PE of a foreign entity: distinct corporate/tax perimeter (Ch. 3 / Ch. 4B)
- Threshold test satisfied? YES → collective procedure applies, proceed to §10.2 selection-perimeter analysis
- Threshold test satisfied? NO → individual-dismissal treatment; still confirm selection-population defensibility separately
- → Proceed to §10.1 Prioritization Matrix

GOVERNING PRINCIPLE

Nothing in §§10.1–10.6 overrides this perimeter map. A prioritization or sequencing conclusion that is commercially attractive but inconsistent with the entity, province, or employer facts recorded here is not a viable plan — it is a plan that has not yet been legally tested.

10.1 Prioritization: Value, Execution Cost, and Buyer Optionality

The portfolio should be optimized as a single program, not site by site — but "program" here means the program applicable to each relevant employer entity, since a site held by a separate Italian subsidiary does not automatically share a threshold, a tax position, or a fiscal-consolidation perimeter with the others. Within that constraint, four criteria are scored consistently across every site:

- **Financial contribution and trajectory** — EBITDA and its 36-month trend, distinguishing cyclical from structural underperformance.
- **Strategic and intangible value**, per the Chapter 2 diagnostic — specialized workforce capability, registered authorizations (*Albo Fornitori*), or customer-relationship intangibles a purely financial score would miss.
- **Execution cost and risk** — liability exposure (Chapter 6), environmental profile (§10.4), and site-specific labor complexity.
- **Buyer optionality** — an identifiable strategic buyer, PE interest, or competitor appetite changes both the expected recovery and the execution path (a Chapter 9 going-concern sale rather than closure), and should be scored from the outset.

Site	Employer Entity	EBITDA Trend	Strategic / Intangible Value	Execution Cost & Risk	Buyer Interest	Proposed Route
A						
B						
C						

This matrix deliberately has no composite score column — a numeric ranking at this stage would obscure the trade-offs it is meant to surface, before the financial optimization exercise of §10.3 has been run.

10.2 Sequencing: Legal Constraints, Selection Perimeter, Liquidity, and Leverage

The Aggregation Rule, Precisely Stated

Article 24 of Law 223/1991 aggregates redundancies where an employer with more than fifteen employees intends at least five dismissals within 120 days, across production units *of that same employer* in the same province. This is entity-specific. Employees of a genuinely separate Italian subsidiary are not aggregated with another Group company's headcount merely because a common foreign parent adopted one restructuring plan, the economic cause is common, announcements are simultaneous, or the entities operate in the same province. Aggregation across nominally separate employers requires an affirmative finding — a unified employment centre, joint employer relationship, sham division of what is factually a single undertaking, or a fraudulent structure — established on the specific facts.

CJEU C-907/24, Precisely Cited and Scoped

The judgment (CJEU, Tenth Chamber, 4 June 2026, *Egenergy Srl, in liquidazione, già Orefice Generators Srl*, Case C-907/24, CELEX 62024CJ0907) held that termination following an employee's refusal to comply with a unilaterally imposed, geographically distant, materially detrimental relocation can fall within the Directive 98/59/EC concept of "dismissal." The judgment determines only that such terminations fall within the EU concept of dismissal; the relevant employer, establishment, reference period, and national threshold must still be established separately under Article 24. In a multi-site program, its relevant application is narrow: a proposed long-distance internal transfer from a closing site to a retained site, if it amounts to a relocation an employee could reasonably refuse on these terms, may fall to be counted within the losing site's threshold calculation — it does not establish a general rule that any working-condition change anywhere in the portfolio aggregates with dismissals elsewhere.

The Selection-Population Perimeter

Reaching the correct threshold is not sufficient. Italian case law requires a documented organizational justification wherever the Article 5 selection-criteria population is confined to the closing site or function rather

than extended to a comparable population elsewhere in the same employer entity. This is frequently the higher-risk issue in a multi-site program: closing Site A while retaining functionally interchangeable roles at Site B, without a documented basis for treating the two as separate pools, exposes the entity to individual challenge even where the collective procedure itself was correctly run.

Consultation Workstreams to Clear, by Source

- The employer / production-unit perimeter (§10.0A).
- The threshold calculation, per entity and province.
- The selection population and criteria (above).
- Long-distance transfers assessed against the narrowly-scoped C-907/24 holding.
- Applicable CCNL and site-specific company agreements.
- European Works Council obligations under **Directive 2009/38/EC as currently transposed**. Directive (EU) 2025/2450 amends this framework but requires transposition only by 1 January 2028 and applies generally from 2 January 2029 (narrow exceptions from 2 January 2028) — it does not govern today's process.
- Article 47, Law 428/1990, for information/consultation specific to a going-concern transfer under Chapter 9, distinct from the Article 24 closure procedure.

Liquidity Sequencing — Corrected Taxonomy

Map every site's execution against distinct categories, not a single "cash-generating vs. cash-consuming" axis:

- Cash receipts
- Cash payments
- Restricted or trapped cash (e.g., escrow, lender-controlled accounts)
- Working-capital realization
- Collateral release
- Guarantee or credit-capacity release — improves headroom but is **not itself a cash inflow**
- Accounting gains or losses with no immediate cash effect

Sequence, within the legally available options above, to avoid a mid-program liquidity trough.

Communications — Scenario-Tested, Not Prescribed

Sequencing toward lower-visibility sites first is a reasonable starting hypothesis, not a default rule — it can read as an attempt to weaken collective representation depending on the specific relationships involved. Scenario-test sequencing options against consultation triggers, operational interdependency between sites, union/EWC interconnection, confidentiality and disclosure constraints, regional political involvement, customer/supplier continuity, and realistic leakage probability.

SEQUENCING LOGIC

Cash-flow map: receipts, payments, restricted cash, WC realization, collateral release, guarantee release, non-cash gains/losses

→ Legal constraint check: Art. 24 threshold test (§10.0A), selection perimeter, EWC 2009/38/EC, Art. 47 L.428/1990

→ Identify legally available sequences

→ Scenario-test: leakage risk, union/EWC interconnection, customer/supplier continuity

→ Sequencing recommendation — approved through applicable Group and Italian-entity governance gates (§10.5)

10.3 Financial Portfolio Optimization

Maximize enterprise value of the Italian operations, retained and divested, net of execution cost — not minimize current site-level losses; a break-even, buyer-attractive site and a modestly-lossmaking, high-closure-cost site are each mishandled by a pure cost-minimization rule, in opposite directions.

The value model carries: after-tax, discounted cash flows; probability-adjusted (not assumed) sale proceeds; stranded and duplicated transition costs; working-capital recoverability distinct from headline proceeds; environmental and litigation provisions (§10.4); financing break costs and guarantee releases (improves headroom, not a cash inflow); state-aid and incentive recapture exposure; downside liquidity headroom and retained-option value; and shared-services/IT separation costs.

Tax, at Entity Level

A site does not carry an independent tax-loss position. Results of several sites belonging to one Italian company enter that entity's single taxable base; offset across different entities requires participation in the Italian fiscal-consolidation regime, and pre-consolidation losses generally remain with the generating entity under Article 118 TUIR.

Transfer Pricing, Correctly Scoped

Moving a function between sites of the same Italian legal entity is not a cross-border controlled transaction and does not by itself trigger Article 110(7) TUIR exit-compensation analysis. Migration to a foreign associated enterprise engages the Chapter 4A / OECD Chapter IX analysis, but compensation is not presumed — it depends on whether something of value transfers, or rights are terminated or substantially renegotiated, in circumstances where independent parties would require payment. Flag any arm's-length compensation determined to be due; do not assume it.

Accounting Consequences — Classification Tests, Not Automatic Outcomes

IFRS 5 held-for-sale/discontinued-operations treatment applies only where the specific recognition conditions are met, and a site exit is a "discontinued operation" only where it represents a major line of business, geographical area, or qualifying coordinated disposal plan. IAS 37 does not permit a restructuring provision merely because management is considering a program; its recognition conditions (a detailed formal plan, a valid

expectation created in those affected) must be independently satisfied. OIC 9 and OIC 31 apply to the Italian statutory framework actually used by the reporting entity. Run the classification tests; do not assume the standard applies because the transaction resembles one that typically triggers it. Where the Group is within Pillar Two scope, check GloBE effects per Chapter 4B.

10.4 Environmental and Real Estate Considerations

Environmental Liability, Correctly Mapped to the Statute

Legislative Decree 152/2006, Title V, distinguishes three distinct positions rather than a single "strict, owner-based" regime:

- **Articles 242 and 244** govern the responsible polluter and the remediation procedure, attaching on established causation.
- **Article 245** governs the non-responsible owner or other interested party, who carries notification and preventive-measure obligations rather than the full remediation duty.
- **Article 253** governs the resulting real charge and special lien on the property once remediation costs are incurred, independent of who bears the underlying duty.

Establishing which article applies to a given site requires establishing causation and operator history, not ownership alone — and that determination requires care where the Group's own predecessor entity was the historic operator, where a merger or corporate succession may have carried the exposure forward, where remediation has been voluntarily assumed, or where a contractual indemnity exists: a private indemnity allocates risk between the contracting parties but does not by itself eliminate public-law exposure toward the regulator.

Staged Diligence, Not a Single Desktop Review

A parallel desktop assessment across the candidate portfolio remains the right first step, but is not the complete diligence exercise. Where it identifies a recognized environmental condition or an information gap, the process continues:

- Historical and regulatory desktop review
- Site inspection
- Targeted intrusive investigation where justified
- Assessment of whether findings trigger Article 245 notification or preventive obligations
- Remediation estimate and timeline
- Accounting provision, allocated to the specific transaction it affects

Real Estate — the Section's Other Half

For every divested site, confirm:

- Ownership, title, and encumbrances

- Cadastral and planning conformity
- Building permits and any unauthorized works (*abusi edilizi*)
- Fire-prevention certification
- Asbestos and other hazardous-materials status
- Landlord reinstatement obligations on lease exit
- Early-termination rights and penalties
- Subleases and third-party occupancy
- Guarantees and deposits held or to be released
- Property-tax consequences of the disposal route chosen
- Transferability of permits tied to the premises rather than to the operating entity
- Whether the site transfers as a standalone real-estate sale or as part of a going-concern business transfer under Chapter 9 — the two carry materially different transfer mechanics and buyer diligence expectations

10.5 Portfolio Governance and the Live Program Dashboard

The CRO-chaired steering committee's output is a **recommendation**. It becomes binding only once ratified by the governing board of each affected Italian entity, exercised through valid resolutions and any powers of attorney the Chapter 7 CRO mandate actually confers. Bypassing the Italian board in favor of direct parent instruction does not automatically trigger Article 2497 c.c. liability — that requires, among other elements, an actual exercise of *direzione e coordinamento*, conduct contrary to correct corporate and business-management principles, legally relevant prejudice, causation, and consideration of any elimination of damage or compensating advantages. What bypassing the board does do is weaken the governance defense and supply evidence a claimant could use toward establishing those elements. *Amministratore di fatto* exposure is a separate doctrinal basis — the de facto exercise of managerial function by a person outside the formal governance structure — and should not be conflated with Article 2497.

GOVERNANCE ESCALATION

CRO Steering Committee (Legal · Tax · HR · Treasury · Ops) — recommendation only

- Group-level capital allocation review
- Each affected Italian entity's board — independent evaluation and resolution
- Formally delegated execution authority
- Site-level execution under Chapters 3–9
- (Reserved matters escalate back to the Steering Committee)

The dashboard tracks per site: employer entity; the cash-flow categories from §10.2 (not a single burn figure); execution cost against budget; consultation status against every §10.2 workstream; environmental status under

the corrected §10.4 staged process; buyer status; permits; litigation; expected completion; and the specific board-level gate the site is currently awaiting.

10.6 Consolidating Retained Operations Post-Rationalization

Workforce and know-how continuity proceeds through internal mobility and retention arrangements and, only where the transfer is to a foreign associated enterprise and involves value under the corrected §10.3 standard, coordination with Chapter 4A on any arm's-length compensation found to be due.

Governance normalization does not mean *direzione e coordinamento* itself ends or was ever abnormal — lawful direction and coordination of a subsidiary may continue indefinitely. What should end, and what the CRO mandate should specify a point for, is the **extraordinary operational intervention** that exceeds the Group's ordinary governance model during active execution.

Regulatory and contractual re-basing confirms State aid registrations, incentive eligibility, and business-connected contracts succeeding under Article 2558 c.c. — automatic succession into non-personal, business-connected contracts, subject to the counterparty's statutory right to withdraw for just cause within three months of notice, with employment separately governed by Article 2112 c.c. — against the entity's actual post-rationalization scope.

Decision Protocol

For each site, before advancing a gate:

Required Inputs

- §10.0A perimeter record
- §10.1 matrix scoring
- §10.2 threshold-test and selection-perimeter outcome
- §10.4 staged environmental status
- Real-estate checklist status

Required Outputs

- Board resolution (not steering-committee sign-off) authorizing the proposed route
- Updated dashboard entry

Decision Owner

The governing board of the specific Italian entity holding the site, acting on the CRO's recommendation.

Do-Not-Proceed Conditions

- Threshold test or selection-perimeter analysis incomplete

- Environmental status still at desktop-review stage with an unresolved recognized condition
- Real-estate encumbrance or permit-transferability issue unresolved
- No board resolution obtained for the specific entity

Source Date

All citations current as of 15 August 2026; the EWC analysis is to be re-run against Directive (EU) 2025/2450 as its 2028–2029 transposition and application dates approach.

Primary Citations

PRIMARY CITATIONS

Art. 24, L. 223/1991 · CJEU C-907/24 (Egenergy, già Orefice Generators, judgment CELEX 62024CJ0907, 4 June 2026) · Art. 28, L. 300/1970 with Art. 650 c.p. · Directive 2009/38/EC · Art. 47, L. 428/1990 · Art. 118 TUIR · Art. 110(7) TUIR / OECD Ch. IX · D.Lgs. 152/2006 Arts. 242, 244, 245, 253 · D.Lgs. 231/2001 · Art. 2497 c.c. · Art. 2558 c.c. · Art. 2112 c.c. · Directive (EU) 2026/470

Chapter 11 — Full Exit: Where Downsizing Ends and Closure Begins

11.0 Introduction: Full Exit as a Route Decision

Every chapter preceding this one has addressed a downsizing that leaves an Italian entity in place — reduced in scope, potentially reduced in headcount and footprint, but continuing to operate. This closing chapter addresses the different case: the decision to cease the Italian entity's activity entirely. That decision is a route decision, not a single legal mechanism, and the route chosen determines which body of law governs everything that follows.

A foreign parent reaching a full-exit decision has four routes available, not one. It may sell the entity's shares to a third-party buyer, leaving the Italian company itself untouched and simply transferring control. It may merge the Italian entity into another group company — domestically, or through a cross-border merger under Legislative Decree 19/2023, as amended by Legislative Decree 88/2025 — under which, in a merger by absorption, the absorbed company ceases to exist *without liquidation* and its legal relationships pass to the surviving entity by universal succession; where the merger is outbound and cross-border, the Italian company may cease to exist as an Italian legal person while Italian tax exposure continues through a permanent establishment or, where assets genuinely leave the Italian taxing jurisdiction, through Article 166 TUIR. It may sell the business as a going concern under the whole-entity variant of the Chapter 9 mechanics, addressed at §11.10. Or it may dissolve through voluntary liquidation.

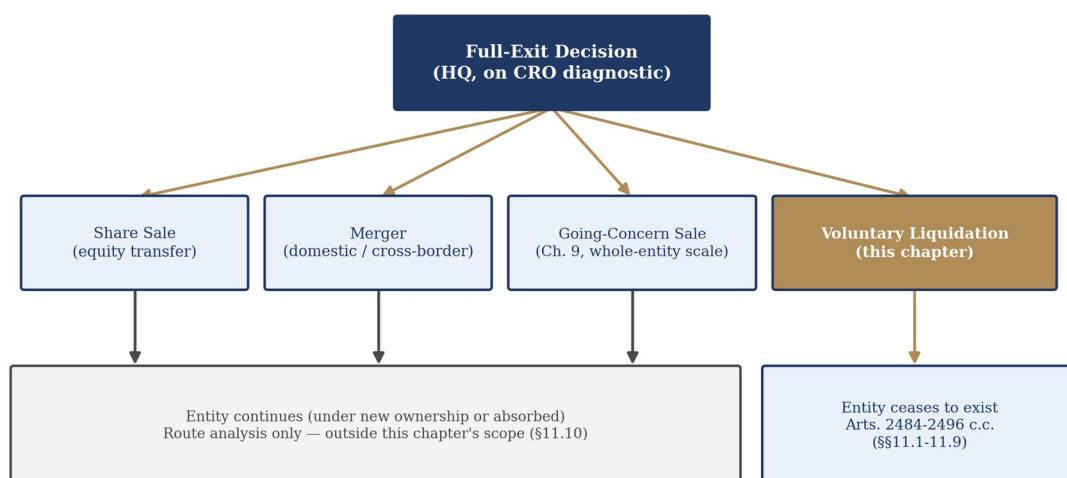


Figure 11.A — A full exit is a route decision; voluntary liquidation is one route among four.

This chapter is confined, deliberately, to the fourth route. The share-sale and merger routes do not extinguish the entity in the way liquidation does — the entity continues, under new ownership or absorbed into a survivor — and raise a transactional and governance analysis that is closer in kind to the going-concern sale discussed at §11.10 than to anything unique to this chapter. That confinement is a scoping decision, not an oversight: a foreign parent evaluating a full exit should treat this chapter as one component of a broader route analysis, to be read alongside §11.10, rather than as the exhaustive treatment of full exit as such.

Within that scope, this chapter does not repeat the diagnostic methodology of Chapter 2, the governance mechanics of Chapter 3, the tax framework of Chapters 4A–4B, the labor procedures of Chapter 5, the liability analysis of Chapter 6, the CRO's governance role from Chapter 7, the CNC treatment of Chapter 8, the asset-deal mechanics of Chapter 9, or the portfolio-level sequencing of Chapter 10. All of that framework applies to a full exit as much as to a partial downsizing. What follows is confined to what is genuinely unique to voluntary liquidation.

A second threshold point requires correction of a common assumption. Voluntary liquidation is not a procedure legally reserved to companies that can pay every creditor in full, and an insolvent company may already be validly in voluntary liquidation. Insolvency changes the liquidators' duties and may require engagement with an appropriate CCII instrument; it does not, without more, invalidate the corporate resolution to dissolve, and there is no single moment of automatic “conversion” from a voluntary to a judicial track. The governing reality is a spectrum the liquidators must monitor continuously, not a binary gate checked once at the outset.

1. Solvent voluntary liquidation	Ordinary Arts. 2484–2496 c.c. mechanics; no CCII engagement required.
2. Financial distress, realistic full-payment prospects	Liquidation continues; liquidators monitor and document the payment trajectory.
3. Probable insolvency	Immediate CCII assessment required (§8.2 conditions reviewed); CNC access evaluated.
4. Actual insolvency	Documented decision among CNC, restructuring agreement, composition procedure, or application for judicial liquidation — not an automatic “conversion.”

Figure 11.B — Solvency is a spectrum the liquidators must continuously reassess, not a binary gate.

⚠ CRITICAL CORRECTION — Paradigm shift — solvency is not a one-time test

Do not treat “is the company solvent” as a question answered once, at the dissolution resolution, and then set aside. It is a question the liquidators must be able to answer, on the current facts, at every material step of the liquidation — and the answer determines which of the four categories in Figure 11.B governs the next action, including whether continued voluntary liquidation remains legally defensible at all.

11.1 Causes of Dissolution and the Decision to Close (Article 2484 c.c.)

Article 2484 c.c. enumerates the causes of dissolution applicable to an *s.r.l.* or *s.p.a.* The cause most relevant to this chapter's scope is the shareholders' voluntary resolution to dissolve the company (Article 2484, no. 6, c.c.) — the mechanism by which a foreign parent, having ruled out the share-sale and merger alternatives noted at §11.0, formally initiates closure. Dissolution under this provision takes legal effect not upon the resolution's

adoption but upon its registration with the Registro delle Imprese; the interval between adoption and registration is not a formality to be treated loosely, since the directors' management powers narrow the moment dissolution occurs, and a mismatch between the internal record and the registered date is a documentation gap the liquidators inherit.

For an *s.r.l.*, the resolution is adopted under the shareholders'-decision mechanics of Article 2479-*bis* c.c. read together with Article 2480 c.c. and must be recorded in notarized minutes; describing this simply as an “extraordinary meeting,” borrowing *s.p.a.* terminology, elides a real structural difference between the two corporate forms that matters for quorum and formality purposes. For an *s.p.a.*, the equivalent mechanics run through Article 2368, second paragraph, c.c. As with every corporate act examined in Chapter 3, the resolution's validity depends on being properly convened, properly minuted, and properly filed; a defective resolution to dissolve exposes the same risks — voidability, third-party unenforceability, evidentiary weakness — as a defective resolution to downsize examined at §3.1.

Indicative sequencing. A voluntarily-liquidated Italian entity with no material litigation, no complex real estate or environmental exposure, and a cooperative creditor base typically moves from the dissolution resolution to cancellation from the Registro delle Imprese over twelve to twenty-four months; a full asset realization, a contested labor consultation, or an active tax audit can extend this materially. These are ranges drawn from execution experience, not statutory deadlines, and any specific timeline should be an output of the liquidators' own planning under §11.2, not an assumption built into a divestiture calendar before that planning exists.

11.2 Appointment of the Liquidators and the Transition from Management to Liquidation

The resolution to dissolve must appoint one or more liquidators and define the scope of their powers (Article 2487 c.c.). From the moment dissolution takes effect, the directors' management powers are limited to the conservation of company assets pending the liquidators' appointment (Article 2486, first paragraph, c.c.); the liquidators, once appointed, take office upon registration of their appointment under Article 2487-*bis* c.c., and the directors must at that point deliver to them the corporate books, a statement of the company's accounts as of the date dissolution took effect, and a management report covering the period since the last approved financial statements. From that point forward, and subject to the limits fixed in the appointing resolution, the liquidators — not the directors, and not local management acting outside a liquidator appointment — hold the power to act on the company's behalf (Article 2489 c.c.). The company must indicate its status as “in liquidazione” in its corporate name and on all subsequent filings and correspondence from the point dissolution takes effect.

The appointing resolution is where the practical execution questions a foreign HQ will actually ask should be answered in writing, with the same drafting discipline reflected in §§7.8–7.9 for the CRO's authority matrix and reporting structure: who is authorized to sign on the company's behalf and up to what value threshold; who approves individual asset disposals and who merely executes them; who reports to HQ, on what cadence, and through what escalation protocol for decisions exceeding the liquidators' delegated authority; and who is responsible for maintaining the corporate books, the accounting records, and the correspondence file that will constitute the evidentiary record if the liquidation is later examined. Leaving these questions to informal practice reproduces, in the closure phase, the governance-gap exposure Chapter 7 identified in the downsizing phase — at the point in the entity's life when the documentation trail matters most, since it is this record, not the entity itself, that survives cancellation and answers for the liquidation's conduct under §11.7.

A correction on the liquidators' liability standard is necessary here, because it is easy to over-state by analogy to Chapter 6. Article 2486 c.c. governs *directors* after a cause of dissolution has arisen and before the liquidators take office; it does not apply directly to the liquidators themselves. Once in office, the liquidators' authority and liability are governed principally by Article 2489 c.c., which applies the directors' general diligence and liability standard *insofar as compatible* with the liquidators' distinct function. The operative discipline is therefore: once the liquidators take office, if insolvency or a material insufficiency of assets emerges, the liquidators must reassess immediately whether continuing voluntary liquidation remains legally defensible on the facts as they then stand, and whether an appropriate CCII instrument must be engaged — not that Article 2486 attaches to them as it does to directors. It also follows that continuing some business activity during liquidation is not automatically unlawful: Article 2489 c.c. permits acts useful to the liquidation's purpose, and the appointing resolution may authorize temporary continuation of the business, or of a discrete business unit, where doing so preserves realization value — a completed customer order fulfilled rather than abandoned, for example, where fulfilling it is the higher-value outcome for the creditor body as a whole.

This is also the point at which §7.13's third escalation trigger converges directly with this chapter's mechanics. Where a downsizing has been governed by an independent CRO under Chapter 7, and HQ confirms an escalation to full exit, the practical continuity question — whether the same individual or advisory relationship should be appointed liquidator — is addressed in full at §11.9.

11.3 The Liquidation Procedure: Accounting, Asset Realization, and Creditor Treatment

The liquidators' core statutory task is to convert company assets into cash sufficient to satisfy creditors, with any residual balance distributable to shareholders only once the accounts demonstrate that distribution will not prejudice full and timely creditor payment (Article 2491 c.c.). In practice, this task consumes the bulk of a liquidator's time on activities that have no dedicated statutory provision but determine whether the process is defensible: identifying and valuing every asset class inherited from the Chapter 2 diagnostic, sequencing disposals to preserve value, documenting every offer received and every disposal decision taken, and reconciling the emerging cash position against the creditor list on a rolling basis rather than only at the close.

A correction on the accounting mechanics: Article 2490 c.c. does not, as such, mandate a standalone statutory “opening liquidation balance sheet” in the formal sense sometimes assumed. Current accounting practice under OIC 5 confirms that the law no longer separately requires an initial liquidation balance sheet as a distinct statutory document, although establishing opening liquidation values remains operationally indispensable and is properly reflected in the liquidators' handover documentation and the first annual liquidation accounts. The liquidators should accordingly prepare a documented opening liquidation statement, supported by the directors' handover accounts and management report under Article 2487-*bis* c.c.; the first annual liquidation financial statements must then explain the liquidation valuation criteria applied and the changes from the previous going-concern accounting basis, consistent with Article 2490 c.c. Annual accounts continue to be prepared throughout the liquidation period until its close, and the final liquidation balance sheet and distribution plan must be approved by the shareholders — subject to a ninety-day period during which creditors may challenge the final balance sheet, after which it is deemed approved by tacit approval under Article 2492 c.c. — before the company can be cancelled from the Registro delle Imprese.

A correction is also needed on the creditor-treatment standard. This guide's earlier drafts imported the language of *par condicio creditorum* from collective insolvency proceedings too directly into solvent voluntary liquidation, which is not itself a judicial collective procedure with a court-administered distribution waterfall.

The liquidators' actual obligations are to observe contractual maturity dates; respect security interests and statutory priorities among creditors; avoid any payment or distribution that would prejudice the company's ability to satisfy its creditors in full; treat related-party positions — addressed in depth at §11.4 — with particular documented care given the self-dealing concern they raise; and reassess the procedure immediately, per §11.0 and §11.8, if the facts indicate the company can no longer meet this standard. Advances to shareholders during liquidation are not categorically prohibited: Article 2491 c.c. permits them where the accounts demonstrate they will not prejudice full and timely creditor payment, potentially supported by appropriate guarantees. What remains true, and is the operative risk this guide's liability framework is built to flag, is that a distribution or a related-party settlement made without that documented basis — particularly one favoring an affiliate of the foreign parent ahead of creditors of equal or higher rank — is a direct route to the civil exposure under Article 2489, second paragraph, c.c. and, on the additional facts discussed at §11.8, to criminal exposure.

11.4 Intercompany Relationships and Cash Management During Liquidation

A downsizing scenario, addressed throughout Chapters 3 through 10, typically involves an Italian entity that remains part of an operating group and can absorb intercompany adjustments over time. A liquidation cannot: every intercompany relationship must be identified, valued, and unwound on a defined timetable before the entity ceases to exist, and the related-party care standard described at §11.3 applies to the parent and its affiliates as creditors exactly as it applies to any third party.

Shareholder loans. Article 2467 c.c. subordinates shareholder financing to the claims of other creditors where the loan was granted at a time reflecting an excessive imbalance between the company's debt and its equity relative to its economic position, or in a financial situation in which a reasonable equity contribution, rather than a loan, would have been called for — the statutory test, not the looser shorthand of “manifest undercapitalization” this guide's earlier drafts used. Where the Italian entity sits within a group financing structure, Article 2497-*quinquies* c.c. extends this subordination logic to financing granted by any group company exercising *direzione e coordinamento*, not only the direct shareholder, and the liquidators should apply the test group-wide rather than only to the immediate parent's advances. Applying the Article 2467 test prospectively before repaying any shareholder loan during liquidation is essential: repaying a subordinated loan ahead of ordinary creditors is the paradigm case of the preferential-payment exposure addressed at §11.3.

Debt waivers as a funding mechanism. Where the foreign parent instead waives a shareholder loan or another intercompany receivable to fund the closure — a common mechanism where the entity's own assets are insufficient to cover wind-down costs — the Italian tax consequences require separate analysis and should not be assumed to be tax-neutral. Article 88, paragraph 4-*bis*, TUIR governs the taxable treatment of debt waivers by shareholders, and the amount excluded from the debtor company's taxable income depends on certification of the creditor's tax basis in the waived receivable; absent that certification, the full waived amount may be treated as taxable income to the Italian entity at precisely the point its funding is most constrained. This analysis belongs alongside the liquidation proceeds and tax-period analysis at §11.6 and should be run before, not after, a waiver is executed.

Cash pooling. Exiting a group cash-pooling arrangement on dissolution is a risk-based recommendation, not a categorical statutory obligation, and this guide's earlier drafts overstated it as the latter. Some pooling arrangements may need to remain operationally active for a limited period — to fund payroll, tax payments, or the liquidation's own working capital — before an orderly exit is practicable. What Article 2489 c.c. and the

related-party care standard actually require is liquidator control over any pool movement, no unauthorized upstream sweeps once liquidation has commenced, regular reconciliation of the entity's pool position, arm's-length terms consistent with the transfer-pricing discipline of Chapter 4A, and documented protection of the creditor body's interests for as long as the arrangement continues.

Management fees, royalties, and shared services. Ongoing charges under intercompany service agreements, IP licenses, or shared-services arrangements should be evaluated for termination or run-off as of the dissolution date, with any accrued but unpaid amounts treated as ordinary intercompany payables subject to the same creditor-ranking discipline as third-party claims.

Intercompany receivables. Where the Italian entity holds receivables from other group entities, the liquidators' collection of those receivables follows the same realization discipline as any third-party asset under §11.3; a foreign parent should not assume intercompany receivables can be waived or extended informally without engaging the Article 88(4-bis) analysis above and the same creditor-protection analysis that governs any other pre-liquidation value transfer to the parent.

NOTE — Practical discipline

Inventory every intercompany relationship and agree the wind-down sequence *before* the dissolution resolution is adopted — not ad hoc once liquidation is underway — and document every intercompany settlement to the same evidentiary standard as a third-party transaction.

11.5 Labor Wind-Down and the Special Closure Procedure

The collective-dismissal framework of Chapter 5 applies to a full-exit workforce reduction as it does to a partial downsizing, with one structural qualification rather than a wholesale departure from it. The *repêchage* obligation discussed at §5.3 ordinarily has no operative content where the employing entity genuinely ceases to exist and no residual position can, as a matter of fact, be offered; group-wide redeployment exposure can nonetheless arise in exceptional cases involving a single-employer finding, co-employment, artificial fragmentation of what is functionally one employer across group entities, or other facts connecting the closing entity to another group employer in Italy, and that possibility should be checked rather than assumed away.

CRITICAL CORRECTION — Mandatory stop before any closure announcement

Before announcing or implementing a total cessation, labor counsel must document whether the special closure procedure under Article 1, paragraphs 224–238, Law 234/2021 (as subsequently amended) applies. That regime can require advance notification and a closure-impact plan for qualifying employers contemplating definitive cessation with substantial redundancies, and its thresholds, exclusions, and interaction with the ordinary Law 223/1991 collective-dismissal process must be confirmed before the Law 223 procedure is commenced or any communication under §11.11 is made.

11.6 Final Tax Consequences: Liquidation Tax Periods, Asset Realization, Cross-Border Transfers, and Closing Compliance

CRITICAL CORRECTION — Critical correction — liquidation is not, by itself, an exit-tax event

Voluntary liquidation and cancellation of an Italian company do not themselves constitute a transfer within the meaning of Article 166 TUIR. Article 166 applies principally where an enterprise transfers its tax residence abroad, transfers assets from an Italian permanent establishment to a foreign head office, or otherwise removes business assets from the Italian taxing jurisdiction — an actual cross-border migration of residence or assets, not the domestic act of winding up. Article 166-*bis* TUIR, moreover, governs the fiscal values of assets *entering* the Italian tax base and is not an exit-tax provision at all. Earlier drafts of this chapter treated every remaining asset, function, or risk as “deemed to leave the Italian taxing jurisdiction upon the entity's cessation” — that proposition is incorrect and is withdrawn.

The correct analysis separates several distinct tax questions that a liquidation actually raises. Assets sold to third parties during liquidation generate ordinary taxable gains or losses under the standard TUIR realization rules. Assets assigned in kind to shareholders — where liquidation proceeds are distributed as property rather than cash — generally require valuation under the ordinary rules, commonly by reference to normal value, with the resulting gain taxed to the company as if the asset had been sold. Where functions, risks, or intangibles are transferred to foreign group companies before or during the liquidation — a genuine cross-border relocation of a function, distinct from the entity's own domestic dissolution — arm's-length compensation is required under Article 110, paragraph 7, TUIR and the OECD Chapter IX framework carried forward from Chapter 4A, and it is only in that scenario, or in an actual change of tax residence, that Article 166 is engaged.

Liquidation also creates separate tax periods under Article 182 TUIR, distinct from the entity's ordinary fiscal-year cycle: an interim period from the start of the fiscal year to the date dissolution takes effect, and, depending on the liquidation's duration, either a single final liquidation-period return (where liquidation does not exceed the statutory threshold duration) or multiple interim liquidation-period returns culminating in a final return upon closure. IRAP filings follow the same period logic. VAT registration remains active, and the entity remains a VAT taxable person, until formal deregistration; any accumulated VAT credit should be reconciled and, where a refund rather than a carryforward is the only available route given the impending deregistration, formally requested with the specific documentation the Agenzia delle Entrate requires to process a refund to a company in liquidation. Withholding-agent obligations continue throughout, including the final Form 770 filings covering payroll and other withholding positions. Where the Italian entity participates in a domestic tax consolidation or a VAT group, the liquidation's effect on that consolidation — exit timing, allocation of consolidated positions, residual liability for consolidated-period assessments — requires separate analysis before the final returns are prepared. Where the group is within the scope of Pillar Two, the DAC9 centralized filing mechanism under Directive (EU) 2025/872 governs the top-up-tax information return specifically for in-scope groups; it is not a general liquidation filing and should not be treated as a routine closing-compliance item outside that scope.

Three further items warrant attention before the final return is filed, since each represents value that is lost rather than merely deferred if not addressed while the entity is still capable of using it: accumulated tax-loss carryforwards, which under the ordinary TUIR rules may offset gains crystallizing during liquidation, subject to the anti-abuse limitations applicable where the entity's activity or ownership has changed materially in the preceding period; the VAT-credit position addressed above; and any pending or reasonably foreseeable tax

audit, which should be identified and, where possible, addressed or provisioned for before the final balance sheet is prepared, since an audit opened after cancellation converts what would have been an entity-level exposure into the post-cancellation exposure of former shareholders and liquidators addressed at §11.7.

Taxation of the liquidation proceeds paid to the foreign shareholder. This is among the first questions a foreign CFO will actually ask, and it was not addressed in earlier drafts of this chapter. The final distribution to the foreign parent must be analyzed in two components: the portion representing a return of contributed share capital and tax basis, which is not, in principle, a taxable dividend, and the distributable excess above that basis, which is treated as a dividend distribution for Italian withholding-tax purposes. Domestic withholding applies to that excess absent relief; relief may be available under the relevant income tax treaty, subject to the treaty's own conditions, or, where the conditions of the EU Parent-Subsidiary Directive as implemented in Italy are met, under a full exemption from withholding. Securing either form of relief requires, before payment, documentation of the foreign shareholder's tax residence, its status as beneficial owner of the distribution, and, for Parent-Subsidiary relief, evidence of the qualifying holding period and percentage. In-kind distributions of assets to the shareholder require the same normal-value analysis referenced above, applied both to the company's own gain and to the character of what the shareholder is treated as having received. This analysis should be run, and the supporting documentation assembled, before the final distribution is made, not after — withholding not applied at source is not easily recovered once the entity has been cancelled.

11.7 Residual Liabilities and Post-Cancellation Exposure

Cancellation of the company from the Registro delle Imprese extinguishes the company's legal personality, but this does not extinguish creditors' claims outright, and the framework governing what happens next is more differentiated than a single rule. Article 2495, second paragraph, c.c. — as settled by Cassazione, *sezioni unite*, in the line of authority beginning with judgments 6070, 6071, and 6072 of 2013 — allows creditors left unsatisfied at the close of liquidation to pursue former shareholders, but only up to the amounts those shareholders actually received in the final distribution, and to pursue the liquidators personally only where the unsatisfied claim is attributable to the liquidators' own fault. Claims under this provision may be served, for one year following cancellation, at the company's former registered office. This is a real but bounded exposure, not the categorical proposition that every unpaid liability simply “reattaches” to shareholders or liquidators without qualification.

Two further regimes, distinct from Article 2495 c.c. and of particular consequence for a foreign shareholder, extend certain exposures well beyond that one-year window and require separate tracking.

Exposure	Governing framework	Duration / trigger
Ordinary unpaid creditor claims against former shareholders (capped at amounts received) or liquidators (fault-based)	Article 2495, second paragraph, c.c.	Claims servable for 1 year post-cancellation at the former registered office
Tax assessments, collection, and litigation concerning the cancelled company	Article 28, paragraph 4, Legislative Decree 175/2014	Cancellation takes effect for these purposes only after 5 years
Tax liability of liquidators and shareholders specifically	Article 36, DPR 602/1973	Distinct liability regime running alongside Article 2495 c.c.

Exposure	Governing framework	Duration / trigger
Insolvency-related civil and criminal liability	CCII generally; Article 322 CCII for the criminal offenses	Fact-dependent; see §11.8

Document retention. Because former shareholders and liquidators remain answerable across these overlapping windows, the underlying record must survive at least as long as the longest applicable exposure. Corporate books and resolutions are subject to a ten-year post-liquidation custody obligation under Article 2496 c.c. Tax records supporting the final returns should be retained for at least the five-year period relevant to Article 28(4), D.Lgs. 175/2014 — and longer where a specific assessment or audit is pending. Payroll, environmental, health-and-safety, and GDPR-relevant records are each governed by their own, separately-determined retention periods and should not be assumed to track the corporate-books or tax timelines. Custody of this consolidated record should be assigned in the appointing resolution discussed at §11.2 to a specific, named custodian, rather than left unallocated once the liquidators' mandate formally closes.

The company does not vanish at cancellation — four separate survival regimes run afterward.

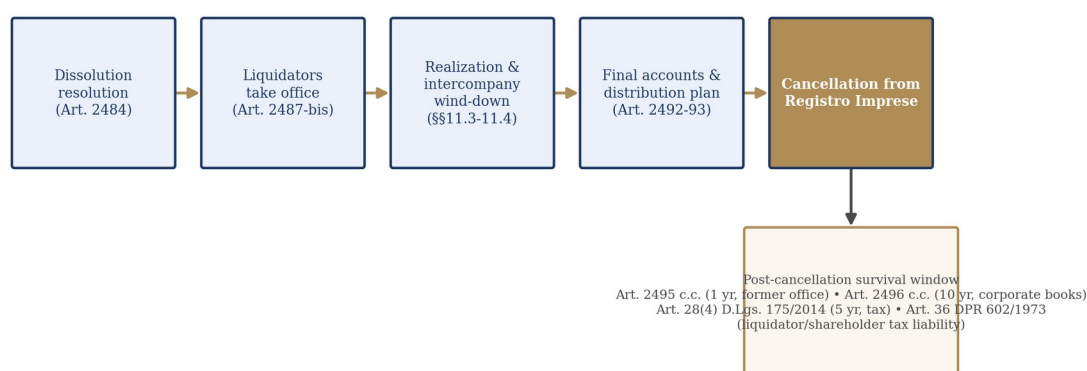


Figure 11.C — Indicative liquidation sequence and the liability/tax exposure that outlives cancellation.

11.8 Heightened Exposure in the Liquidation Phase

The liability framework of Chapter 6 applies throughout liquidation without modification, and this chapter does not restate it; two points of emphasis are specific to this phase and require correction of an overstatement in earlier drafts. First, a payment made with knowledge of the company's distressed position does not, by itself, constitute *bancarotta preferenziale* or any other bankruptcy offense. The offenses under Article 322 CCII ordinarily presuppose the opening of judicial liquidation and require proof of the specific statutory elements of the offense charged; civilly improper creditor treatment during a still-voluntary liquidation is not automatically criminal at the moment insolvency is known, though it may create serious civil exposure under §11.3 and may, on the additional facts required, later fall within Article 322 CCII if judicial liquidation is opened. Second, the corrected liability standard set out at §11.2 continues to apply here: it is Article 2489 c.c., not Article 2486 c.c., that governs the liquidators directly, with the operative duty being immediate reassessment of the voluntary procedure's continued defensibility once insolvency or material asset insufficiency emerges, and — where HQ personnel continue to direct the liquidation informally beyond the reporting line established under §7.9 — the same *amministratore di fatto* exposure addressed at §6.3 for those personnel.

11.9 Converting the CRO Mandate into a Full-Exit Mandate

Section 7.8 identified three conditions under which the CRO should formally recommend that a downsizing mandate escalate toward full exit. Where HQ confirms the escalation and, after considering the alternatives noted at §11.0, elects the liquidation route, the practical conversion proceeds in three steps.

First, the CRO's diagnostic record — the Chapter 2 classification as updated through the downsizing phase, the Chapter 3 governance documentation, and the Chapter 6 liability monitoring — becomes the opening inventory referenced at §11.3, carried forward rather than reconstructed from scratch. Second, HQ and the CRO jointly determine whether the CRO's engagement converts into the liquidator appointment addressed at §11.2 or whether a new liquidator is engaged. In favor of continuity: the CRO's accumulated diagnostic knowledge, the documentation trail built under §7.7(vi) and §7.8, and the reporting relationship already established with HQ under §7.9 all reduce the transitional cost and the risk of information loss at the point of closure. Against continuity, in the narrow but genuine case where the CRO's own conduct during the downsizing phase is itself a subject of scrutiny — for example, where a §6.3 *amministratore di fatto* concern has been raised, however preliminarily, against the CRO or the advisory firm — a liquidator drawn from the same relationship compromises the independence the appointment is meant to provide, and an independent liquidator with no prior involvement should be engaged instead. Third, the reporting-line and escalation-protocol discipline of §7.9 continues into liquidation largely unchanged in structure, though the substance shifts from downsizing-execution status to liquidation-execution status, and the escalation triggers shift from the §7.13 conditions to the insolvency-reassessment duty addressed at §11.0 and §11.8.

The governing principle does not change at the point of conversion: the CRO, or the liquidator into whom that role converts, does not make HQ's strategic decisions, but supplies the independent, documented diagnostic on which HQ's decisions are made, carrying the governance discipline built through the downsizing phase forward into closure rather than allowing it to lapse at the point of greatest exposure.

11.10 What This Chapter Does Not Cover

As noted at §11.0, a share sale of the Italian entity's equity and a domestic or cross-border merger into another group company are both viable full-exit routes that do not involve dissolution and fall outside this chapter's scope. A merger by absorption extinguishes the absorbed entity without a liquidation procedure at all, its relationships passing to the survivor by universal succession — a materially different mechanism from anything addressed in this chapter, and not, as an earlier draft stated, simply another route that “does not extinguish the entity.”

Readers should also not overstate what a going-concern sale of the entire business achieves. A whole-entity *cessione d'azienda*, following the Chapter 9 mechanics at the scale of the entire business, does not itself close the Italian company: it transfers the business, after which the selling company ordinarily still must settle any retained liabilities and complete a liquidation or another corporate step to close the shell that remains. Nor does it necessarily transfer the entire workforce free of collective-dismissal exposure, or necessarily close out the parent's Italian exposure, or stand as the commercially preferable route “in most cases” without qualification, as earlier drafts suggested. Article 2112 c.c. protects employment continuity on a transfer, but the consultation procedure under Article 47, Law 428/1990 may apply before the transfer can proceed; specific employees or specific liabilities may remain with the seller by agreement or by operation of law; post-transfer redundancies at the buyer are a realistic outcome the seller should plan for rather than assume away; and the seller can retain

contractual, tax, environmental, and Article 2560 c.c. exposure notwithstanding the sale. A foreign parent reaching the point of considering full exit should evaluate the share-sale, merger, and going-concern-sale alternatives on their own facts before committing to voluntary liquidation; this chapter's mechanics apply once none of those alternatives is available or commercially viable — and the route-selection reasoning itself should be documented, per §11.12, regardless of which route is ultimately chosen.

11.11 Communications Governance in a Full Exit

A total cessation is, from the perspective of employees, customers, suppliers, banks, and the communities in which the entity operates, categorically different from a partial downsizing: there is no continuing entity to reassure anyone about. The temptation to communicate early — to give customers and suppliers advance notice, to reassure lenders, to manage the group's own public narrative — is understandable and, in an uncoordinated process, is precisely how a full exit generates the kind of premature or inconsistent disclosure that complicates the labor procedure that must still be executed correctly.

CRITICAL CORRECTION — Sequencing constraint on disclosure

No communication that could reasonably be understood by employees, works councils, or trade unions as notice of definitive closure should be made — to any audience, including customers, suppliers, or the media — until labor counsel has confirmed the applicable statutory sequence under Law 223/1991 and, where relevant, the Law 234/2021 closure procedure identified at §11.5. Premature disclosure does not merely create a public-relations problem; it can itself be treated as evidence bearing on the collective-dismissal procedure's validity.

Subject to that constraint, the CRO or liquidator, consistent with the reporting-line discipline of §7.9 and §11.2, should maintain a single coordinated communications sequence: statutory labor consultation first, followed by creditor and counterparty notification consistent with the liquidators' obligations under §11.3, followed by any broader public or media communication HQ elects to make. A single point of contact — typically the CRO or liquidator, reporting to the designated HQ counterpart — should be responsible for all external communication regarding the closure, for the same reason a single reporting line was recommended at §7.9: a diffuse set of informal communications from various HQ or local personnel is difficult to reconcile after the fact and creates the same documentation and *amministratore di fatto* risks addressed throughout this guide.

11.12 Executive Exit Checklist

The checklist below consolidates the practical sequencing this chapter has developed. It is organized as a decision-and-escalation reference, not a self-executing procedure, and each action should be read against the corresponding section above before being undertaken.

Before adopting the liquidation resolution

- Document the full route analysis under §11.0 and §11.10 — including the reasons each alternative (share sale, merger, going-concern sale) was rejected. Liquidation may be the rational choice even where a buyer exists; the reasoning, not merely the conclusion, is what the record must show.
- Obtain an updated asset and liability inventory building on the Chapter 2 classification.
- Confirm the liquidation is adequately funded through to closure.

- Inventory intercompany relationships requiring wind-down (§11.4) and run the Article 88(4-bis) TUIR analysis for any contemplated debt waiver.

Before appointing the liquidator

- Resolve the CRO-to-liquidator continuity question, including the independence check (§11.9).
- Define signing authority, approval thresholds, and reporting lines in the appointing resolution (§11.2).
- Confirm the corporate name and filings reflect “in liquidazione” status.

During liquidation

- Establish opening liquidation values and prepare the first liquidation accounts per §11.3.
- Execute asset realization under the creditor-treatment standard of §11.3, not an unqualified par condicio rule.
- Unwind shareholder loans, cash pooling, management fees, and intercompany receivables on the documented schedule (§11.4).
- Confirm the Law 234/2021 closure-procedure applicability before running the Law 223/1991 process (§11.5).
- Continuously reassess solvency against the Figure 11.B taxonomy; do not treat the initial solvency assessment as fixed (§11.0, §11.8).
- Coordinate all external communication through the single point of contact identified at §11.11.

Before deregistration

- Finalize liquidation-period tax returns, IRAP, VAT deregistration and any refund claim, Form 770, and any tax-loss, VAT-credit, or open-audit positions (§11.6).
- Complete the withholding and treaty/Parent–Subsidiary Directive analysis for the final distribution before it is paid (§11.6).
- Do not close bank accounts as a matter of routine before deregistration — pending VAT refunds, tax payments, recoveries, indemnities, or the final distribution may require a controlled account or another payment mechanism to remain open.
- Settle or novate outstanding leases, utilities, licenses, permits, and bank guarantees; confirm insurance runs off appropriately rather than lapsing on live exposure.
- Assemble the cancellation-readiness record: creditor reconciliation, contingent claims, pending refunds and litigation, tax exposures, environmental and employment matters, insurance run-off, and document custody assignment (§11.7).

After deregistration

- Track the four overlapping survival windows in the Table at §11.7 (Article 2495 c.c.; Article 2496 c.c.; Article 28(4), D.Lgs. 175/2014; Article 36, DPR 602/1973).
- Retain records for the longest applicable statutory period, not a single default duration.
- Maintain the named custodian as the point of contact for any post-closure tax or regulatory correspondence directed at the former entity.

⚠ CRITICAL CORRECTION — Stop / escalate triggers — applicable at any phase

Cash-flow insufficiency relative to known creditor claims • missed tax or payroll payments • inability to fund a known environmental obligation • a disputed intercompany repayment or waiver • material deterioration in asset realization values against the opening inventory • active creditor enforcement action • any indication of actual insolvency • any proposal to distribute assets to shareholders before creditor claims are adequately provided for. Any one of these should trigger immediate reassessment under §11.0 and, where warranted, escalation to insolvency or criminal counsel before further action is taken.

11.13 What the Full-Exit Record Must Show

Consistent with the evidentiary discipline running throughout this guide, a full exit executed through voluntary liquidation should leave a record capable of demonstrating, to a tax authority, a court, or a creditor examining the process after the fact: that the route decision among share sale, merger, going-concern sale, and liquidation was made on a documented basis, not by default; that the dissolution resolution and liquidator appointment were validly adopted and timely registered; that the liquidators continuously reassessed solvency against the taxonomy at §11.0 rather than relying on a single point-in-time determination; that every intercompany relationship — shareholder loans, cash pooling, management fees, receivables, and any debt waiver — was unwound on arm's-length terms and in a documented sequence, not informally or at HQ's operational convenience; that creditors were treated consistently with the standard described at §11.3, with any distribution to shareholders supported by contemporaneous accounts demonstrating no prejudice to creditor payment; that the labor procedure, including the Law 234/2021 threshold determination, was completed before any closure communication was made; that the tax analysis at §11.6 — separate tax periods, cross-border transfers actually tested against Article 166, and the withholding and treaty position on the final distribution — was documented before, not after, the relevant payment or filing; and that the post-cancellation custodianship of records and points of contact was assigned rather than left to lapse with the liquidators' own mandate.

11.14 Closing the Guide

This chapter closes the framework this guide has developed across eleven chapters: a diagnostic starting point in Chapter 2, three co-equal substantive pillars in Chapters 3 through 5, a consolidated liability analysis in Chapter 6, the governance response of an independent CRO in Chapter 7, the negotiated-resolution instrument of the CNC in Chapter 8, the asset-deal execution vehicle in Chapter 9, portfolio-level sequencing in Chapter 10, and, here, the mechanics unique to voluntary liquidation as one route among several to a full exit. Across all eleven chapters, the entity's legal extinction is the final administrative step in a longer process, not its measure of success. That measure is set earlier: whether every employee was treated lawfully, every creditor satisfied or properly provided for, every tax position correctly analyzed rather than assumed, every intercompany relationship unwound on documented terms, and every governance decision recorded well enough to answer for itself after the entity that made it no longer exists. The Conclusion that follows restates this progression as a set of numbered, practitioner-facing takeaways for a reader approaching the guide's thesis for the first time or returning to it at the point of decision.

Machine-Readable Reference Block

The tables and JSON object below index this chapter's core mechanisms, corrections, and decision gates for automated parsing (RAG ingestion, downstream scripts, or LLM tool use). They restate, rather than supplement, the narrative above and carry no independent authority.

A. Corrections Applied to the Prior Draft

id	section	prior_claim	corrected_position
C-01	11.6	Liquidation deemed all remaining assets/functions/risks to leave the Italian tax jurisdiction (Art. 166 TUIR) automatically.	Art. 166 TUIR requires an actual transfer of tax residence or removal of assets from the Italian jurisdiction; domestic liquidation alone does not trigger it. Art. 166-bis TUIR governs assets entering the Italian tax base, not exit taxation.
C-02	11.0	Insolvency causes an automatic 'conversion' from voluntary liquidation to a judicial track.	Solvency is a four-category spectrum (Figure 11.B) requiring continuous reassessment; the response ranges from continued monitoring to a documented decision among CNC, restructuring agreement, composition procedure, or judicial liquidation.
C-03	11.2 / 11.8	Article 2486 c.c. applies to liquidators as it applies to directors.	Article 2486 c.c. governs directors pre-liquidator-appointment. Liquidators are governed principally by Article 2489 c.c., applying the directors' standard only insofar as compatible.
C-04	11.0 / 11.10	Neither a share sale nor a merger extinguishes the entity.	A share sale does not extinguish the entity. A merger by absorption does extinguish the absorbed entity, without liquidation, by universal succession; an outbound cross-border merger may end the entity's Italian legal personality while Italian tax exposure can continue (PE, Art. 166).
C-05	11.3	Article 2490 c.c. requires a standalone statutory 'bilancio iniziale di liquidazione.'	OIC 5: no separate statutory initial liquidation balance sheet is mandated; opening liquidation values remain operationally necessary and are reflected in the handover accounts and first annual liquidation accounts.
C-06	11.3	Nothing may be distributed until all creditors are paid or 'adequately provided for' (par condicio framing).	Voluntary liquidation is not a judicial collective proceeding. Advances to shareholders are permitted under Art. 2491 c.c. where accounts show no prejudice to full creditor payment, potentially supported by guarantees.
C-07	11.8	A payment made with knowledge of insolvency automatically constitutes	Art. 322 CCII offenses ordinarily require the opening of judicial liquidation plus proof of

id	section	prior_claim	corrected_position
		bancarotta preferenziale.	specific statutory elements; civil impropriety is not automatically criminal.
C-08	11.4	Art. 2467 c.c. test restated as 'manifest undercapitalization.'	Statutory test restored: excessive debt/equity imbalance or a financial situation calling for equity rather than debt; Art. 2497-quinquies extends the logic group-wide.
C-09	11.4	Immediate exit from cash pooling is a statutory obligation.	Risk-based recommendation, not a statutory rule; liquidator control, no unauthorized sweeps, reconciliation, and arm's-length terms are the operative requirements.
C-10	11.7	Every unpaid liability simply 'reattaches' to shareholders or liquidators on cancellation.	Art. 2495 c.c. caps shareholder exposure at amounts received and conditions liquidator exposure on fault; separate 5-year tax survival (Art. 28(4) D.Lgs. 175/2014) and liquidator/shareholder tax liability (Art. 36 DPR 602/1973) regimes run in parallel.
C-11	11.10	Going-concern sale of the whole business necessarily closes the parent's Italian exposure and transfers the workforce free of collective-dismissal risk, and is preferable 'in most cases.'	Whole-entity cessione d'azienda does not itself close the company; Art. 47 L. 428/1990 consultation may apply; retained liabilities, post-transfer redundancies, and Art. 2560 c.c. exposure remain possible.

B. Decision-Gate / Escalation Runbook

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      "stop_condition": "Resolution not properly convened, minuted, or filed",
      "escalation": "Local corporate counsel"
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      "trigger": "Dissolution resolution adopted",
      "responsible_owner": "Shareholders / appointing resolution",
      "required_evidence": "Appointing resolution defining powers, signing authority, reporting lines (§11.2); registration under Art. 2487-bis c.c.",
      "deadline": "Liquidators take office on registration of appointment",
      "stop_condition": "CRO independence conflict identified (§11.9)",
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    "required_evidence": "Updated accounts against Figure 11.B taxonomy",
    "deadline": "Continuous — not a one-time determination",
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88(4-bis) TUIR analysis for any waiver",
    "deadline": "Before dissolution resolution, per checklist (§11.12)",
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    "stop_condition": "Accounts do not support no-prejudice finding, or related-party preference indicated",
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    "trigger": "Final liquidation balance sheet approved",
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    "required_evidence": "Basis/dividend-component split; residency, beneficial-ownership, and (if applicable) Parent-Subsidiary Directive
documentation (§11.6)",
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    "trigger": "Final balance sheet tacitly or expressly approved (Art. 2492 c.c., 90-day window)",
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  "Article 166 TUIR applicability, absent an actual cross-border transfer of residence or assets",
  "Availability of tax-loss carryforwards, absent anti-abuse-limitation review",
  "Ordinary (non-subordinated) ranking of related-party/shareholder debt",
  "Non-application of the Law 234/2021 special closure procedure",
  "Entitlement to treaty or Parent-Subsidiary Directive relief without documentation",
  "Disappearance of liabilities upon cancellation"
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Appendix A — The Financial Model: Cost, Cash, Recovery, and Scenario Control

The Global CFO's Guide to Italian Downsizing and Exit

A.0 Introduction: Converting the Legal Framework into a Financial Decision

The preceding chapters establish how an Italian downsizing or exit must be diagnosed, authorized, taxed, negotiated, governed, and executed. This Appendix converts those workstreams into the financial model through which a foreign CFO determines whether the proposed restructuring is adequately funded, whether its expected benefits justify its execution cost, and whether the retained Italian operation remains viable once it is complete.

A downsizing budget is not the sum of severance payments, professional fees, and asset-disposal costs. It must capture four economically distinct components, each addressed in this Appendix: execution costs, meaning the incremental cash expenditure required to implement the restructuring; continuing and stranded costs, meaning expenses that survive the operational reduction temporarily or permanently; recoveries and avoided costs, meaning proceeds, tax recoveries, working-capital releases, and future expenditure the restructuring eliminates; and risk-adjusted exposures, meaning liabilities whose amount, timing, or probability cannot yet be fixed with certainty. These components must be modelled across time, because a restructuring producing a positive accounting return can nonetheless generate an unmanageable short-term liquidity requirement where severance, professional fees, taxes, and decommissioning costs fall due before asset-sale proceeds, tax refunds, or operating savings are realized.

The governing financial question is therefore not what the downsizing will cost. It is what the maximum cumulative funding requirement will be, when it will arise, what assumptions support it, and what residual value or liability will remain once execution is complete.

This Appendix provides a framework rather than market-price estimates, because the actual amounts depend on the entity's workforce, applicable collective agreement, asset condition, environmental profile, operating model, tax position, contractual obligations, and chosen transaction structure — variables the diagnostic classification of Chapter 2 and the pillar-specific analyses of Chapters 3 through 11 are designed to surface. The framework identifies the required inputs, prevents material categories from being omitted or counted twice, and allows management — or an AI system operating on this guide and the entity's own data, on the terms addressed at §A.14 — to construct a preliminary model for validation by the CRO, the finance function, and the specialist advisers engaged under Chapter 7.

A.1 The Three Financial Views That Must Be Kept Separate

Every restructuring model should maintain three related but distinct views, and should not treat any one of them as a proxy for the other two.

The cash-flow view measures the timing of actual receipts and payments. It determines the maximum funding requirement and whether the Italian entity can meet its obligations as they fall due, and it is the primary view for solvency monitoring, parental funding decisions, and the Article 2086 c.c. adequate-structure analysis addressed at §3.2.

The profit-and-loss view identifies restructuring provisions, impairments, gains or losses on disposal, accelerated depreciation, employee costs, advisory expenses, and continuing operating losses. An expense recognized in the accounts is not necessarily paid in the same period, and a cash payment may settle a provision recognized in an earlier one; the two views must be reconciled rather than used interchangeably.

The tax view determines whether each accounting charge is deductible, when deductibility arises, whether losses can be used, and whether the restructuring creates taxable gains, exit taxation, VAT consequences, withholding taxes, incentive clawbacks, or other fiscal exposures of the kind developed in Chapters 4A and 4B. A gross restructuring cost cannot be reduced automatically by applying the Italian corporate tax rate; a tax benefit should enter the model only once its legal availability, timing, and practical recoverability have been assessed by the tax advisers addressed in Chapter 4A.

For every material line item, the model should record its accounting recognition, its cash-payment or recovery date, its tax treatment, its responsible owner, its confidence level, and its documentary source — the same evidentiary discipline the governance record of §3.8 requires of the corporate acts the model supports.

A.2 The Core Model Architecture

At its simplest, the model calculates a Gross Execution Cost and a Net Economic Cost.

$$\text{Gross Execution Cost} = \text{Workforce Costs} + \text{Operational Transition Costs} + \text{Asset and Site Costs} + \\ \text{Professional and Governance Costs} + \text{Tax and Regulatory Costs} + \text{Contractual Exit Costs} + \\ \text{Stranded Costs} + \text{Risk Allowances}$$

$$\text{Net Economic Cost} = \text{Gross Execution Cost} - \text{Asset and Business Recoveries} - \text{Working-Capital} \\ \text{Releases} - \text{Tax and Incentive Recoveries} - \text{Other Quantifiable Benefits}$$

$$\text{Restructuring NPV} = \text{Present Value of Post-Restructuring Savings and Recoveries} - \text{Present} \\ \text{Value of Execution and Residual Costs}$$

The model must also calculate the Maximum Funding Requirement — the absolute value of the lowest point reached by cumulative monthly net cash flow over the execution period. This figure, not the final net cost, is generally the number that matters most to the foreign parent during execution, because it determines the funding commitment required to complete the process without interrupting employee payments, creditor settlements, tax compliance, or the retained operation. A restructuring with an attractive net economic cost and an unfunded maximum cash requirement is not, on the terms this guide applies throughout, an adequately governed one.

A.3 Workforce Costs

Workforce expenditure is frequently the largest and most time-sensitive component of an Italian downsizing, and should be built employee by employee, or by clearly defined cohort where individual data is not yet available. The model should distinguish mandatory entitlements from negotiated and operational amounts, since the three categories behave differently in both timing and certainty.

Mandatory employment liabilities include salary and fixed remuneration through the termination date; accrued but unused holiday and leave; accrued thirteenth- and, where applicable, fourteenth-month salary; TFR; notice-period compensation or salary during worked notice; social-security contributions and payroll charges; amounts arising under the applicable CCNL, company agreements, individual contracts, or protected-status rules; and any settlement payments already contractually committed. Each amount should be flagged as already accrued on the balance sheet, an incremental profit-and-loss charge, a future cash payment, or a figure

captured elsewhere in the forecast, so that the same liability is not counted twice under different headings. TFR illustrates why this discipline matters on two levels. First, it may represent a substantial cash outflow at termination while producing little or no new restructuring expense to the extent already accrued, and treating the full payment as both a new cost and a new cash outflow overstates the economic cost of the restructuring. Second, TFR is not invariably funded entirely from company cash: the model must distinguish the portion retained by the employer from the portion already transferred to a supplementary pension fund or to the INPS Treasury Fund (*Fondo di Tesoreria*), since only the employer-retained portion represents a cash outflow the entity itself must fund at termination, while the balance is a claim the departing employee asserts directly against the pension fund or INPS rather than against the entity.

Negotiated separation costs — union-negotiated incentives, individual settlement amounts, enhanced severance offered in exchange for a settlement and waiver executed in an appropriate protected venue (*sede protetta*), and the legal and administrative cost of executing those settlements — are not fixed at the outset and should be modelled through scenario assumptions rather than a single figure:

$$\text{Negotiated Separation Cost} = \text{Employees in Scope} \times \text{Average Agreed Incentive per Employee}$$

The average incentive should be tested under the base, adverse, and severe scenarios addressed at §A.12, since the labor-consultation dynamics addressed in Chapter 5 make this figure one of the model's most sensitive inputs.

Retention and knowledge-transfer costs apply to employees required to maintain production, complete customer orders, transfer know-how, or preserve the retained operation, and should be modelled separately from employees leaving immediately. Relevant costs include retention and completion bonuses, temporary salary adjustments, travel and relocation, secondment costs, training of personnel at the receiving location, overlapping payroll during the transfer period, and the cost of replacing a critical employee who leaves early. Retention is not merely an additional cost; it reduces execution risk, lost contribution margin, customer penalties, and production disruption, and the model should connect retention expenditure explicitly to the operational losses it is intended to prevent rather than treating it as an isolated line item.

A.4 Operational Transition and Business-Continuity Costs

A downsizing normally creates a transition period during which the old and new operating models coexist, and the resulting duplication is a real execution cost frequently omitted from the initial budget. The model should capture duplicate payroll and management structures, parallel production at the Italian and receiving sites, temporary warehousing and logistics, safety-stock requirements, machinery relocation and recommissioning, product requalification and customer approval, regulatory or technical recertification, IT separation and migration, Transitional Services Agreement costs, supplier qualification and tooling duplication, customer-service and warranty support during the transition, temporary facilities and external contractors, and incremental insurance and security.

$$\text{Transition Cost} = (\text{Monthly Duplicate Operating Cost} \times \text{Expected Overlap Period}) + \text{One-Time Migration Costs}$$

The overlap period should be sensitized rather than assumed. A three-month delay in customer approval, machinery commissioning, or the union consultation addressed in Chapter 5 can affect payroll, rent, inventory, advisory fees, and working capital simultaneously, and the model should not alter one cost line while leaving the others fixed when the underlying timing assumption changes.

A.5 Lost Contribution Margin and Disruption Cost

The most visible costs are not necessarily the largest. A delayed transfer, a strike, a premature employee departure, a supplier suspension, a customer loss, or a production interruption can destroy contribution margin that never appears on an adviser's invoice or a severance schedule.

$$\text{Lost Contribution Margin} = \text{Lost or Deferred Revenue} \times \text{Contribution Margin Percentage}$$

The analysis should distinguish revenue permanently lost from revenue merely deferred to a later period, revenue transferred to another Group entity, temporary volume decline during transition, contractual penalties and expedited-freight costs, and any customer price concession required to preserve the relationship. Revenue transferred to another Group entity is not necessarily an economic loss at the consolidated level, but it can reduce the Italian entity's own ability to fund its restructuring; the entity-level cash model and the Group-level economic model should accordingly be maintained separately rather than netted against each other.

A.6 Asset, Site, Environmental, and Real-Estate Costs

The Chapter 2 diagnostic classifies assets as surviving-and-transferring, surviving-and-remaining, or terminating, and the financial model should apply a distinct cost-and-recovery treatment to each classification rather than a single undifferentiated asset budget.

Assets transferred within the Group carry dismantling, packaging and transport, customs and import charges where applicable, in-transit insurance, installation and commissioning, technical adaptation, downtime, independent valuation, transfer-pricing compensation under the framework of Chapter 4A, exit-tax cash timing, and any incentive clawback. The fact that an asset remains within the Group does not make its transfer costless.

Assets sold to third parties should be modelled at expected net proceeds rather than gross sale value:

$$\text{Net Asset Recovery} = \text{Expected Sale Proceeds} - \text{Broker and Auction Fees} - \text{Removal and Preparation Costs} - \text{Taxes and Transaction Costs} - \text{Buyer Credits or Indemnities}$$

Book value is not a reliable proxy for sale proceeds; forced-sale value, orderly-liquidation value, and going-concern value can differ materially, and the model should state which basis it uses for each asset category.

Assets abandoned or scrapped carry disassembly, waste classification, transport and authorized disposal, decontamination, accounting write-off, reinstatement of leased premises, and cancellation of permits and registrations, with any scrap proceeds shown separately from disposal costs so that neither obscures the other.

Environmental exposure should be modelled by stage — desktop review, site investigation, remediation design, remediation execution, authority monitoring and certification, and any residual indemnity or escrow — under the applicable framework of D.Lgs. 152/2006. Where the amount is uncertain, the model should not insert a single unsupported estimate:

$$\text{Expected Environmental Cost} = \sum (\text{Scenario Cost} \times \text{Scenario Probability})$$

The decision model should nonetheless preserve the full severe-case exposure as a separate liquidity and governance scenario, since an expected value is not a substitute for understanding the amount actually payable if the adverse scenario crystallizes — a distinction the multi-site environmental review at §10.4 develops further where a portfolio of sites is involved, and a discipline addressed further at §A.12 below.

Real-estate costs include rent through termination, early-termination penalties, dilapidation and reinstatement, utilities and security during vacancy, property taxes and service charges, sale costs, mortgage or guarantee releases, and carrying costs during a delayed disposal.

A.7 Contractual Exit and Working-Capital Effects

Every material customer, supplier, lease, financing, service, licence, and insurance contract identified in the Chapter 2 diagnostic should be assigned a financial treatment. Potential costs include minimum-purchase commitments, take-or-pay obligations, early-termination charges, customer warranty and service obligations, penalties for delayed or cancelled deliveries, supplier claims for unused inventory or dedicated tooling, software and technology termination fees, guarantee-release costs, and break costs on financing or hedging arrangements — the last of which should be checked against the covenant review addressed at §3.6.

The model should separately quantify the working-capital effect of the restructuring:

$$\text{Working-Capital Release} = (\text{Receivables Collected} + \text{Inventory Liquidated}) - (\text{Trade Payables Settled} + \text{Other Operating Liabilities Paid})$$

A reduction in inventory or receivables is not automatically a recovery equal to book value; collection risk, customer deductions, obsolete stock, discounts, returns, and disposal expenses must be reflected in the figure used. Particular care is required to avoid treating the same reduction in working capital both as operating cash flow and as an asset-sale recovery, a double-counting error the model's ownership and source discipline at §A.1 is designed to prevent.

A.8 Professional, CRO, Governance, and Transaction Costs

Professional expenditure should be budgeted by workstream and phase rather than through a single undifferentiated adviser-fee allowance. Relevant categories include the CRO's own fees under the mandate addressed in Chapter 7; corporate and labor counsel; tax and transfer-pricing advisers; valuation, environmental, real-estate, and machinery specialists; payroll and HR support; notarial and Companies Register costs; accounting, audit, and liquidation support; the CNC expert and attestation costs addressed in Chapter 8, where applicable; data-room and document-retention systems supporting the evidentiary record required throughout this guide; communications and stakeholder-management support; and litigation and dispute-resolution reserves. Each category should be further split into fixed fees, monthly retainers, hourly or daily fees, success fees, transaction-contingent fees, reimbursable expenses, VAT recoverability, and any cost continuing after operational closure.

The CRO budget in particular should cover the full expected execution period, including post-completion monitoring where the mandate requires it. Budgeting only to the planned closure date understates the true cost where tax refunds, litigation, environmental matters, liquidation accounts, or creditor settlements continue afterward — precisely the post-completion exposure Chapter 7 identifies as a defining feature of a properly scoped CRO mandate, as distinct from a fragmented panel of advisers whose engagements terminate individually and on inconsistent schedules.

A.9 Tax, Transfer-Pricing, and Regulatory Cash Effects

The tax model should incorporate the matters addressed in Chapters 4A and 4B without treating every potential exposure as a certain cost. Relevant items include taxable gains or losses on asset and business transfers; compensation for transferred functions, assets, risks, customer relationships, or know-how under the Options Realistically Available framework addressed at §4A.4; exit tax; VAT on individual asset disposals; registration tax on a qualifying business or branch transfer; withholding tax on interest, royalties, distributions, or other outbound payments; the interest-deductibility constraint under Article 96 TUIR addressed in Chapter 4B's discussion of post-downsizing ROL capacity; the tax consequences of any loan waiver; incentive clawbacks; the

use or expiry of tax losses; VAT and income-tax refunds; Pillar Two consequences for in-scope Groups; and transfer-pricing documentation, APA, or MAP costs of the kind addressed at §4A.8.

The model should sort each item into one of four categories — certain and quantified amounts; probable amounts capable of reasonable estimation; contingent exposures requiring scenario treatment; and unquantified issues requiring further analysis — and an item in the fourth category should not disappear from the model for want of a number. It should instead appear in a separate risk register with an identified owner, deadline, next action, and decision threshold, consistent with the documentation discipline this guide applies to every open exposure it identifies.

A.10 Stranded Costs and the Residual Italian Entity

A partial downsizing may eliminate revenue or production without eliminating the supporting cost base at the same speed, and these stranded costs determine whether the residual Italian entity — the entity whose post-downsizing governance is addressed at §3.9 — remains viable. The model should identify retained management and administration; finance, payroll, IT, compliance, and statutory costs; rent or property costs that cannot be reduced immediately; shared-service allocations; insurance; audit and tax-compliance costs; underutilized production capacity; minimum supplier commitments; residual warranty and customer-service obligations; and the cost of maintaining the organizational adequacy Article 2086 c.c. requires of the entity going forward.

$$\text{Residual Entity EBITDA} = \text{Retained Revenue} - \text{Retained Direct Costs} - \text{Continuing Overheads} - \text{Stranded Costs} + \text{New Intercompany Remuneration}$$

The model should test whether the residual entity can meet its liabilities as they fall due, maintain adequate governance and control functions, comply with financing covenants, support the post-restructuring transfer-pricing profile addressed in Chapter 4A, and remain operationally credible as a going concern. Where it cannot, the downsizing may merely defer, rather than resolve, the full-exit decision addressed in Chapter 11 — a conclusion the model should surface explicitly rather than leaving implicit in an optimistic set of assumptions.

A.11 Recoveries, Offsets, and Value Preservation

Recoveries should be modelled conservatively and only where an identifiable realization path exists. Potential recoveries include machinery and inventory sales; the sale of a business or branch under the asset-deal structure of Chapter 9; real-estate proceeds; the release of working capital; VAT, IRES, or IRAP refunds; insurance recoveries; landlord deposits; the release of guarantees or restricted cash; replacement-asset mechanisms preserving tax incentives; avoided future lease, payroll, energy, or maintenance costs; continuing income from Transitional Services Agreements; and compensation received for transferred functions or intangibles under Chapter 4A.

$$\text{Risk-Adjusted Recovery} = \text{Gross Expected Recovery} \times \text{Probability of Realization} \times \text{Timing Discount Factor}$$

This probability adjustment serves the expected-value view of the model only, and should not be reapplied within the scenario cash flows addressed at §A.12: a recovery already discounted for its probability of realization is entered into the base, adverse, or severe scenario at that risk-adjusted figure, not weighted a second time by the scenario's own probability assumptions. The model should show gross costs and recoveries separately rather than netting them prematurely, since netting can obscure the funding gap that arises when costs are paid months before the corresponding recovery is received — precisely the sequencing risk the Maximum Funding Requirement calculated at §A.2 is designed to capture.

A.12 Scenario Analysis and Contingency

At minimum, the model should contain three integrated scenarios. The base case assumes the transaction proceeds according to the approved plan, with realistic rather than ideal assumptions regarding consultation, employee retention, asset disposal, tax recovery, and operational transition. The adverse case assumes a defined combination of foreseeable delays or overruns — extended union negotiation, higher separation incentives, delayed customer approval, lower asset proceeds, a longer property carrying period, delayed VAT or tax refunds, additional professional work, or higher environmental or reinstatement expenditure. The severe but plausible case tests whether the entity and the parent can complete the project if several material risks crystallize together — an operational delay, a customer loss, environmental expenditure, and lower recoveries occurring simultaneously rather than in isolation.

A contingency reserve should not be calculated as an arbitrary percentage of the entire budget. It should be built from the uncertainties the model has already identified:

$$\text{Contingency Reserve} = \sum (\text{Potential Cost Impact} \times \text{Probability Weight}) + \text{Management Reserve}$$

As with the risk-adjusted recovery at §A.11, this probability weighting produces a single expected-value contingency figure for planning purposes; it is not to be layered again onto each scenario's own cost assumptions, which already embody a defined severity level rather than a probability distribution. The severe-case gross exposure identified at §A.6 and elsewhere in this Appendix must remain visible in the model in its own right, undiluted by any expected-value weighting, since the board's and the parent's principal use for the severe case is to confirm that the entity can be funded through it if it occurs — not to confirm how likely it is to occur. The management reserve should remain separately identified and subject to a defined approval authority; it should not be used to conceal an incomplete estimate elsewhere in the model.

A.13 Monthly Cash Flow, Funding Commitment, and Decision Gates

The model should operate monthly during the active restructuring period and, where material liabilities or recoveries extend beyond it, quarterly thereafter. Each period should show opening cash, operating receipts and payments, restructuring payments, tax payments and refunds, asset-sale and working-capital recoveries, parental funding, closing cash, minimum liquidity headroom, and cumulative restructuring cash flow.

The parent's funding commitment should cover the adverse-case maximum cash requirement identified at §A.2, plus an approved liquidity buffer, and should be documented consistently with the governance and financing requirements addressed at §3.6 and in Chapter 4B — including the legal and tax distinction between equity, shareholder loans, and other forms of support, given the subordination risk under Article 2467 c.c. that a shareholder loan advanced to fund a distressed downsizing can attract.

The board and CRO should establish decision gates before execution begins, each specifying the required information, the decision owner, the delegated authority, the financial threshold, the documentary output, and the consequence if approval is withheld. Representative gates include approval of the initial business case; authorization to commence employee consultation; approval of the negotiated severance parameters addressed at §A.3; authorization of material asset transfers or disposals; confirmation of environmental scope; approval of any increase in parental funding; reassessment of the residual entity's viability under §A.10; and, where the facts warrant it, escalation from a voluntary downsizing to the CNC addressed in Chapter 8 or to the full exit addressed in Chapter 11.

A.14 AI-Ready Minimum Input Set

A manager using this guide as context for an AI-assisted preliminary plan should supply, at minimum, the inputs summarized below. The output remains a preliminary planning instrument in every case: every legal conclusion, tax treatment, employee entitlement, environmental estimate, and contractual exposure it generates must be verified by the responsible Italian professional before the model is relied upon for a board decision.

Before any input set is compiled or uploaded, the confidentiality and data-protection implications of doing so must be assessed separately from the modelling exercise itself. Identifiable employee data, privileged legal material, trade secrets, and other personal or confidential information should not be entered into an AI system unless that system has been approved for the purpose under the Group's security, confidentiality, and GDPR policies, including any required data-processing agreement and jurisdictional restriction on where the data may be processed. Where employee-level modelling is required for the precision the model calls for at §A.3, the underlying data should use anonymized or pseudonymized identifiers — a cohort or code reference rather than an employee's name — with the identity mapping held separately, outside the AI system, by the entity or its counsel.

Category	Minimum Required Inputs
Entity and scope	Legal form and ownership; sites and functions affected; downsizing, transfer, sale, or full-exit objective; target completion date; retained activities
Workforce	Employee count by site and category (anonymized or pseudonymized per the guidance above); remuneration and payroll burden; TFR and leave accruals, split between amounts retained by the employer and amounts held by a pension fund or the INPS Treasury Fund; notice periods; applicable CCNL; protected categories; employees required for retention or knowledge transfer
Operations	Monthly revenue and contribution margin; fixed and variable operating costs; required overlap period; transfer or closure milestones; customer and supplier dependencies
Assets and property	Book and estimated market value; transfer, sale, abandonment, or retention classification under the Chapter 2 diagnostic; relocation and disposal estimates; leases and reinstatement obligations; environmental status; incentive history
Contracts and working capital	Major termination provisions; customer commitments and warranties; supplier commitments; receivables aging; inventory quality; accounts payable; guarantees and restricted cash
Tax and financing	Tax losses and credits; VAT position; intercompany balances; interest and royalty flows; incentive exposure; proposed functional transfers; expected tax refunds; available parental funding
Governance and risk	Decision authority; CRO mandate; litigation and claims; environmental uncertainties; open tax audits; scenario assumptions; confidence level of each input

Why This Matters to a Foreign Parent

A restructuring can be strategically correct and legally compliant and still fail, if its cash requirement was underestimated, its recoveries arrived later than expected, or the residual entity inherited a cost base it could no longer support. The financial model is accordingly not a finance appendix to the legal process in the loose sense of the term — it is the common operating document through which the board, the CRO, the tax and labor advisers, the operations team, and the parent company reconcile their separate workstreams into a single executable decision. At every stage it should be capable of answering five questions: what the project will cost on a gross and net basis; when the cash will be required; which assumptions create the greatest financial sensitivity; what funding has been committed if the adverse case occurs; and whether the entity remaining after the downsizing will still be viable. Where those questions cannot be answered from the contemporaneous record, the restructuring is not yet financially governed, regardless of how advanced its legal or operational implementation may appear — and the independent CRO's mandate under Chapter 7 exists, in significant part, to ensure that they can be.

A.15 What the Financial Record Must Show

The financial record must show, first, that the board did not approve the downsizing on the basis of an isolated severance estimate or a static accounting provision, but on an integrated model reconciling execution cost, liquidity, tax, recoveries, business interruption, and the residual entity's viability under §A.10.

Second, it must show that costs and recoveries were mapped consistently to the Chapter 2 diagnostic and to the legal, tax, labor, liability, and execution workstreams developed in Chapters 3 through 11, and that every material assumption carried an identified source, owner, date, and confidence level.

Third, it must show that the funding requirement was assessed by reference to the maximum cumulative cash deficit under more than one scenario, as addressed at §A.12, rather than to the final expected net cost alone, and that the parent's funding commitment addressed at §A.13 was adequate for the approved case, with expected-value probability weighting kept distinct from the severe-case gross exposure throughout, per §§A.11–A.12.

Fourth, it must show that the model was updated as facts changed. A budget approved before employee consultation, environmental investigation, customer transition, or asset marketing cannot remain the governing financial record once those processes produce materially different information.

Finally, it must preserve a clear distinction between known liabilities, estimated liabilities, contingent exposures, management reserves, expected recoveries, and unquantified risks. The purpose of the financial model is not to create an appearance of precision. It is to make uncertainty visible, fundable, governable, and capable of being updated before it becomes a source of liquidity failure or a liability in its own right — the same evidentiary standard this guide applies to the governance, tax, and labor record throughout.

APPENDIX B

OPERATIONAL EXECUTION ARCHITECTURE

From Approved Strategy to an Executable Italian Plan

A machine-readable implementation layer for Steering Committees, Italian boards, CROs and specialist advisers

STATUS This Appendix is an operational drafting framework. It does not prescribe a universal sequence or duration, and it does not replace current-law, case-specific legal, tax, labor, environmental, valuation or insolvency advice.

Draft for integration into An Execution Guide to Italian Downsizing and Exit

Andrea Lovisatti | August 2026

B.0 Purpose and Status

This Appendix converts the Guide's substantive framework into a reusable execution architecture. Its purpose is to allow a Steering Committee, the Italian board, an appointed execution lead and their advisers to translate an approved Group strategy into a controlled set of facts, activities, dependencies, decisions, costs, evidence and escalation points.

It is designed for use both by professionals reading the Guide directly and by appropriately secured AI or knowledge-management systems using the Guide as contextual material. It is not a self-executing procedure. Each project must be rebuilt from its own facts, current law, contractual perimeter, employee population, financial condition and professional advice.

CORE RULE The AI system may organize, compare, calculate and draft. It must not invent missing facts, statutory deadlines, professional conclusions, decision authority or legal certainty.

B.1 The Required Output Package

The project should be maintained as one controlled package. At a minimum, that package should contain the following connected records:

ID	Controlled record	Minimum purpose
01	Confirmed-facts and missing-facts register	The factual baseline, source, owner, date and confidence level for every material input.
02	Integrated diagnostic	What remains, transfers, terminates or requires further investigation, consistent with Chapter 2.
03	Master activity register	Every material activity, deliverable, predecessor, owner, gate and evidence requirement.
04	Dependency-based Gantt and critical path	A visual schedule generated from the activity register, not an independently invented timeline.
05	Decision and authority register	Reserved matters, delegated powers, Italian-board decisions, HQ approvals and escalation routes.
06	Integrated risk register	Legal, tax, labor, financial, operational, environmental, data and retained-business risks.
07	RACI / decision-rights matrix	Who is responsible, accountable, consulted and informed for each material output.
08	Financial model	Execution, continuing and stranded costs; recoveries; disruption; tax; scenarios; maximum funding requirement.
09	Evidentiary index	The source documents, advice, minutes, approvals and implementation evidence supporting each decision.
10	Steering Committee dashboard	Status, critical path, decisions required, cash/funding, top risks, changes and exceptions.

B.2 Source Hierarchy and Data Discipline

Every output should distinguish the authority of its source. A convenient hierarchy is:

- Level 1 — confirmed project facts supported by source records;
- Level 2 — signed or final professional advice and valuations prepared for the project;

- Level 3 — approved Group assumptions, budgets and operating-model decisions;
- Level 4 — working assumptions awaiting validation;
- Level 5 — scenarios, sensitivities or AI-generated hypotheses, clearly labelled as such.

Each material data point should carry: source document; source date; responsible owner; status; confidence level; jurisdiction; relevant entity/site; effective date; sensitivity; and the activity, risk, decision or financial line that consumes it.

SECURITY Use only an AI environment approved for the confidentiality, privilege, personal-data and trade-secret sensitivity of the material uploaded. Apply access control, data minimization and project-specific retention rules.

B.3 Status Vocabulary

Status	Required meaning
Not started	Owner not yet mobilized; predecessor or approval may be outstanding.
In progress	Work has commenced; open inputs and next action recorded.
Blocked	Cannot proceed; blocker, blocker owner and escalation recorded.
Ready for review	Deliverable complete in draft and awaiting professional or governance review.
Approved	Required decision-maker has approved; evidence linked.
Implemented	Approved action completed; completion evidence linked.
Validated	Post-implementation acceptance criteria met.
Closed	Residual obligations transferred and record archived.
Not applicable	Reason and approving authority documented.

B.4 Master Activity and Dependency Register

The following register is a starting architecture, not a universal schedule. Activities must be added, removed, subdivided or resequenced for the specific project. Statutory timing should be inserted only after the applicable procedure, trigger, establishment, employee population, transaction route and current law have been confirmed by the relevant adviser.

ID	Workstream	Activity or controlled output	Predecessor / input	Primary owner	Gate
M-01	Mandate	Confirm the approved Group objective, scope, retained Italian business and prohibited irreversible actions.	Approved strategy; board materials	CEO / Steering Committee	DG-01
M-02	Mandate	Establish the HQ Steering Committee, terms of reference, approval limits and escalation protocol.	M-01	CEO / Group GC	DG-01
M-03	Mandate	Determine the Italian execution model: board-led, delegated executive, CRO or other documented arrangement.	M-01; conflict assessment	Italian board / HQ Steering Committee	DG-02
M-04	Mandate	Open the controlled project data room, decision log, assumptions register and legal-privilege protocol.	M-02	Project lead / Group GC	DG-02
D-01	Diagnostic	Confirm legal-entity, branch, site, employee and contractual perimeter.	M-04	CRO / Italian management	DG-03

ID	Workstream	Activity or controlled output	Predecessor / input	Primary owner	Gate
D-02	Diagnostic	Classify tangible assets as remaining, transferring, terminating or requiring further investigation.	D-01	Operations / Finance	DG-03
D-03	Diagnostic	Classify IP, know-how, DEMPE contributions, customer relationships and specialist workforce capability.	D-01	Tax / R&D / Commercial	DG-03
D-04	Diagnostic	Map suppliers, customers, agents, leases, permits, licences, insurance and change-of-control or termination rights.	D-01	Legal / Operations	DG-03
D-05	Diagnostic	Map workforce populations, collective agreements, protected categories, retention needs and selection perimeter.	D-01	CHRO / Labor counsel	DG-03
D-06	Diagnostic	Establish environmental, decommissioning, real-estate and remediation baseline.	D-01	EHS / Environmental adviser	DG-03
D-07	Diagnostic	Establish accounting, tax, VAT, customs, incentives, disputes and compliance baseline.	D-01	Finance / Tax	DG-03
D-08	Diagnostic	Issue the version-controlled integrated diagnostic and unresolved-facts register.	D-02 through D-07	CRO / Italian board	DG-03
G-01	Governance	Map decision rights, conflicts, reserved matters and Italian-board non-delegable duties.	M-03; D-08	Italian counsel / Group GC	DG-04
G-02	Governance	Prepare mandate, powers, signing limits, reporting lines and indemnity/insurance review for the execution lead.	G-01	Italian board / Group GC	DG-04
G-03	Governance	Prepare the board record: options, entity interest, group benefits, solvency, funding and dissent/escalation process.	D-08; F-04	Italian board / advisers	DG-05
G-04	Governance	Approve the parent funding instrument and restrictions on cash extraction, repayment and distributions.	F-04; T-06	Italian board / Treasury	DG-05
O-01	Operations	Validate receiving manufacturing capacity, quality, regulatory approvals and contingency supply.	D-04	COO / Supply chain	DG-06
O-02	Operations	Design production run-off, customer continuity, supplier transition and inventory disposition.	O-01; D-02; D-04	COO / Site operations	DG-06
O-03	Operations	Design retained R&D, sales and post-sales operating model, interfaces and service levels.	D-03; D-05	R&D / Commercial	DG-06
O-04	Operations	Design ERP/SAP, data, cybersecurity, access-control and records-retention changes.	D-04; O-03	IT / Data / Finance	DG-06
O-05	Operations	Define site closure, security, utilities, waste, permits and environmental handover plan.	D-06; route decision	EHS / Facilities	DG-06

ID	Workstream	Activity or controlled output	Predecessor / input	Primary owner	Gate
T-01	Tax	Complete pre- and post-restructuring FAR analysis and identify economically significant risks and intangibles.	D-03; O-03	Tax / Transfer Pricing	DG-07
T-02	Tax	Complete options-realistically-available and compensation analysis under OECD Chapter IX.	T-01	Tax / Valuation adviser	DG-07
T-03	Tax	Determine whether asset, function, IP or customer-related transfers require valuation or compensation.	T-01; D-02; D-03	Tax / Valuation adviser	DG-07
T-04	Tax	Assess income-tax PE, VAT fixed-establishment, customs and post-downsizing compliance consequences.	O-03; T-01	Tax / VAT counsel	DG-07
T-05	Tax	Assess incentives, clawbacks, exit-tax conditions, Pillar Two/DAC9 and open-audit implications.	D-07; T-01	Tax	DG-07
T-06	Tax/Treasury	Design cash pooling, intercompany funding, guarantees, waivers and liquidity controls for the residual entity.	F-04; O-03	Treasury / Tax / Italian board	DG-05
L-01	Labor	Confirm consultation trigger, affected establishment(s), selection population and applicable collective framework.	D-05; approved contemplated measure	Labor counsel / CHRO	DG-08
L-02	Labor	Design retention, knowledge-transfer, redeployment and business-continuity measures.	D-05; O-03	CHRO / Operations	DG-08
L-03	Labor	Prepare consultation information, rationale, numbers, selection criteria, social measures and communication controls.	L-01; F-02; O-02	Labor counsel / CHRO	DG-08
L-04	Labor	Conduct consultation and negotiations; maintain issue, proposal and authority logs.	L-03; approvals	Authorized negotiators	DG-09
L-05	Labor	Implement dismissals, transfers, settlements, payroll/TFR and protected-category controls only after required process.	L-04	CHRO / Payroll / Labor counsel	DG-10
R-01	Route	Compare continued downsizing, asset deal, CNC, voluntary liquidation and other available routes against current facts.	D-08; F-04	Steering Committee / Italian board	DG-04
R-02	Route	If asset deal remains viable, define ramo perimeter, buyer process, Article 47 procedure and closing deliverables.	R-01	M&A lead / Counsel	DG-09
R-03	Route	If imbalance or creditor negotiation is emerging, test CNC eligibility, documents, protective measures and financing needs.	R-01; liquidity monitoring	Italian board / CRO / Insolvency counsel	DG-11
R-04	Route	If no viable residual operation remains, activate the full-exit route and liquidation-readiness record.	R-01	Shareholders / Italian board	DG-12

ID	Workstream	Activity or controlled output	Predecessor / input	Primary owner	Gate
F-01	Finance	Build the baseline P&L, cash-flow, balance-sheet, working-capital and tax views.	D-07	Group CFO / Italian Finance	DG-03
F-02	Finance	Quantify workforce, transition, continuity, site, professional, tax and stranded costs.	D-02 through D-07	Finance / Workstream owners	DG-05
F-03	Finance	Quantify recoveries, avoided costs, sale proceeds, contribution-margin disruption and risk-adjusted exposures.	F-02; route analysis	Finance / Valuation	DG-05
F-04	Finance	Run base, downside and severe scenarios; calculate maximum cumulative funding requirement and headroom.	F-01 through F-03	Group CFO / Treasury	DG-05
P-01	Program	Build the dependency-based integrated schedule, critical path, milestones, owners and evidence requirements.	D-08; workstream plans	CRO / PMO	DG-06
P-02	Program	Issue the integrated risk register, decision register, assumptions register and weekly dashboard.	M-04; D-08	CRO / PMO	Continuous
P-03	Program	Perform go/no-go readiness review for each irreversible action and confirm funding, authority, advice and evidence.	Relevant predecessor activities	Italian board / Steering Committee	Applicable gate
P-04	Program	Execute cutover, monitor retained-business stability and reconcile actual costs, cash and benefits to the approved case.	DG-10 or route-specific closing	CRO / Operations / Finance	DG-13
P-05	Program	Close workstreams, archive the evidentiary record, transfer residual obligations and establish post-completion monitoring.	P-04	Italian board / CRO / Custodian	DG-14

B.5 Decision Gates and Mandatory Stop Conditions

A decision gate is not merely a milestone. It is the point at which a named decision-maker determines whether specified evidence is sufficient to authorize the next irreversible step. If the evidence is incomplete, the correct output is not approval with a hidden caveat; it is a documented stop, condition or escalation.

Gate	Decision	Minimum evidence	Stop condition
DG-01	Mandate accepted	Group objective, scope, retained business and sponsor confirmed.	No irreversible Italian action; no external communication.
DG-02	Governance mobilized	Committee terms, Italian execution model, data room, privilege and decision log established.	No instruction to local employees or counterparties outside authorized channels.
DG-03	Diagnostic baseline approved	Entity, assets, contracts, workforce, environmental, tax and financial baselines complete or gaps explicitly recorded.	No binding implementation resolution based on an untested factual perimeter.
DG-04	Route and authority approved	Options analysis, entity-interest assessment, conflicts and decision rights documented.	No route commitment or delegation where authority/conflict analysis is incomplete.
DG-05	Funding and viability approved	Scenario model, maximum cumulative cash deficit, headroom and parent support approved.	No implementation if the residual entity cannot remain adequately funded.

Gate	Decision	Minimum evidence	Stop condition
DG-06	Operational design validated	Receiving capacity, continuity, retained model, IT/data and site plan validated.	No production or systems cutover without contingency and acceptance criteria.
DG-07	Tax design validated	FAR, ORA, compensation, PE/VAT, incentives and treasury consequences reviewed.	No function/asset transfer or new intercompany arrangement without documented tax position.
DG-08	Labor process ready	Trigger, perimeter, retention, selection and information package approved by labor counsel.	No premature finality, dismissal notice or inconsistent communication.
DG-09	Negotiated route cleared	Consultation/transaction conditions satisfied or lawful next step confirmed.	No signing or employee transfer before mandatory procedure and approvals.
DG-10	Implementation authorized	All legal, labor, operational, tax, funding and evidence conditions for the action are satisfied.	Stop if any mandatory condition, owner or evidence item remains unresolved.
DG-11	Distress escalation	Liquidity, creditor pressure or continuity indicators require CNC/CCII assessment.	Suspend value leakage, selective payments or unsupported group cash extraction.
DG-12	Full-exit conversion	Residual-operation case is no longer viable and full-exit governance has been approved.	Do not treat downsizing documents as sufficient for dissolution/liquidation.
DG-13	Stabilization accepted	Retained business, supply, systems, liquidity and workforce controls meet acceptance criteria.	Do not release transition resources while critical defects remain.
DG-14	Program closure	Records complete, residual obligations assigned, monitoring and retention periods established.	No project closure while ownership of any residual exposure is unclear.

B.6 RACI and Decision Rights

The matrix below is illustrative. It must be reconciled with actual corporate offices, delegations, local-board duties, the CRO or executive mandate, and any matters reserved to shareholders. “A” identifies accountability for the output, not the legal source of authority unless expressly confirmed.

Output	HQ SC	Italian Board	CRO/Lead	COO	Tax	CHRO	Advisers
Approve Group strategic objective	A	C	I	C	C	I	I
Approve Italian entity implementation	C	A	R/C	C	C	I	C
Own integrated diagnostic	I	A	R	C	C	C	C
Approve funding and liquidity protection	C	A	R	C	C	C	C
Approve tax/transfer-pricing design	I	A	R	C	R	I	C
Approve labor strategy and negotiation authority	I	A	R	C	C	R	C
Manage operational transition	I	C	R	A	C	C	C
Maintain decision and evidentiary record	I	A	R	C	C	C	C
Escalate distress/CNC indicators	I	A	R	C	C	C	C

Output	HQ SC	Italian Board	CRO/Lead	COO	Tax	CHRO	Advisers
Approve irreversible action at decision gate	C	A	R	C	C	C	C

Key: R = Responsible; A = Accountable; C = Consulted; I = Informed. Where the Italian board has a non-delegable duty, the matrix must not be read as transferring that duty to the Steering Committee, CRO or adviser.

B.7 Integrated Risk Register

Risk entries should be linked to the activity register, decision gates and financial model. Probability-weighted expected exposure should remain separate from severe-case gross exposure. A risk cannot be treated as closed merely because a reserve has been recorded.

ID	Domain	Risk event	Potential effect	Control / evidence	Owner
RSK-01	Governance	HQ directions bypass Italian board or documented authority.	Article 2497 / de facto management / weak evidentiary record.	Decision-channel audit; reserved-matters matrix; board minutes.	Italian board / Group GC
RSK-02	Conflict	Local management's personal position affects scope, timing or information.	Delayed or distorted execution.	Conflict declarations; independent validation; segregated approvals.	Italian board / CRO
RSK-03	Labor	Collective redundancy becomes genuinely contemplated before controlled consultation preparation.	Procedural challenge, delay and reputational harm.	Communication protocol; labor-counsel trigger review; decision chronology.	CHRO / Labor counsel
RSK-04	Labor/Operations	Critical employees exit before knowledge transfer.	Loss of continuity, know-how or regulatory capability.	Retention map; knowledge-transfer acceptance criteria; succession coverage.	CHRO / COO
RSK-05	Tax	Contractual transfer-pricing narrative diverges from actual conduct.	Adjustment, penalties, double taxation or controversy.	FAR change log; conduct testing; contemporaneous documentation.	Tax lead
RSK-06	Tax/VAT	Residual activities create PE or VAT fixed-establishment exposure.	Unexpected filing and tax liabilities.	Separate income-tax and VAT analyses; post-cutover testing.	Tax/VAT lead
RSK-07	Treasury	Cash pooling or centralization underfunds the residual entity.	Liquidity crisis and director exposure.	Minimum-liquidity policy; funding commitment; payment controls.	CFO / Treasury / Italian board
RSK-08	Finance	Business case excludes stranded, disruption or transition costs.	Savings shortfall and emergency funding.	Appendix A model; scenario analysis; owner-certified assumptions.	Group CFO
RSK-09	Supply	Receiving manufacturer is not operationally ready.	Customer failure, expedited cost, quality loss.	Capacity and quality validation; dual-running/contingency where appropriate.	COO
RSK-10	Environment	Contamination or decommissioning obligations are discovered late.	Delay, remediation cost and buyer/landlord claims.	Baseline investigation; permit and liability map; reserves.	EHS / Counsel
RSK-11	Data/IT	ERP, personal-data or access changes are incomplete at cutover.	Operational failure, data breach or records loss.	Cutover rehearsal; access matrix; GDPR and retention review.	IT / DPO
RSK-12	Transaction	Proposed asset deal does not satisfy ramo autonomy or required consultation.	Recharacterization, employee or creditor exposure.	Perimeter test; legal opinion; Article 47 plan; closing checklist.	M&A lead / Counsel
RSK-13	Distress	Deteriorating liquidity is treated as ordinary project variance.	Missed CNC window or aggravated creditor loss.	Early-warning thresholds; rolling liquidity; mandatory escalation.	Italian board / CFO
RSK-14	Evidence	Material assumptions lack source, owner, date or confidence level.	Decisions cannot be reconstructed or defended.	Assumptions register; version control; evidence index.	CRO / PMO
RSK-15	Retained business	Closure activity damages sales, R&D, agents or customers intended to remain.	Value destruction despite nominal cost savings.	Separate retained-business KPIs, owners and escalation thresholds.	Commercial / R&D

B.8 Gantt and Critical-Path Generation Rules

The Gantt chart should be generated from the activity register. It should not be drafted first and rationalized afterward. The following rules apply:

- Use the unique activity IDs in §B.4; do not create anonymous bars.
- Represent dependencies explicitly as finish-to-start, start-to-start, finish-to-finish or other justified logic.
- Separate statutory or contractual deadlines from management target dates and working assumptions.
- Do not infer a statutory deadline from a generic description in the Guide. Require current-law confirmation.
- Show each decision gate as a milestone linked to its required evidence and accountable decision-maker.
- Calculate the critical path only after dependencies and durations have been validated by the relevant owners.
- Include uncertainty ranges or scenario schedules where duration depends on consultation, buyer behaviour, permitting, remediation, litigation or authority response.
- Link every material cost with a timing profile to the activities that cause the cash flow.
- Rebaseline only through a controlled change decision that preserves the original baseline and explains the variance.
- Maintain separate views for the full program, statutory procedures, operational cutover, retained-business protection and funding.

MINIMUM GANTT FIELDS activity_id; description; workstream; entity/site; owner; accountable approver; predecessor_ids; dependency_type; earliest_start_constraint; statutory_or_contractual_constraint; assumed_duration; duration_source; milestone; decision_gate; evidence_required; status; percent_complete; forecast_finish; critical_path_flag; variance_reason.

B.9 Financial-Model Input Sheet

Appendix A governs the financial architecture. The table below supplies the operational interface between that model and the execution records. Every material financial line should link back to an activity, risk, contract, employee population, asset or assumption.

Input group	Required content	Source activity	Owner	Classification
Baseline	Revenue, contribution margin, fixed/variable cost, working capital, cash, debt, tax balances	F-01	Finance	Actual / forecast / scenario
Workforce	Population, gross annual cost, notice, severance, incentives, retention, payroll taxes, legal costs	F-02 / L workstream	CHRO / Finance	Employee-level where lawful
Operational transition	Run-off, qualification, tooling, freight, dual running, quality, IT/SAP, TSA, training	F-02 / O workstream	COO / IT	Linked to activity IDs
Continuing and stranded costs	Leases, utilities, systems, insurance, management, advisers, under-absorbed overhead	F-02	Finance / Owners	Residual-entity view
Assets and site	Book value, proceeds, removal, storage, remediation, reinstatement, taxes and fees	F-02 / F-03	Finance / EHS	Gross and net cash
Tax and intercompany	Compensation, WHT, VAT, customs, clawbacks, exit tax, debt waiver, TP controversy	F-02 / T workstream	Tax	Known / estimated / contingent
Recoveries and avoided costs	Sale proceeds, landlord settlement, insurance, grants, avoided capex and operating cost	F-03	Finance	Probability and timing separate
Risk-adjusted exposures	Claim amount, probability, defence cost, payment profile, severe-case gross exposure	F-03	Legal / Tax / Finance	Do not net severe case with expected recoveries
Funding	Opening liquidity, committed facilities, parent support, cash-pool access, restrictions, headroom	F-04	Treasury / Italian board	Maximum cumulative deficit

The model should calculate, at minimum: gross execution cost; continuing and stranded cost; recoveries and avoided cost; tax and regulatory cash effects; disruption and lost contribution margin; expected-value net cost; severe-case gross exposure; monthly or otherwise suitably granular cash profile; maximum cumulative cash deficit; approved funding; and headroom.

FUNDING GATE The final net cost is not the funding requirement. The funding requirement is driven by the maximum cumulative cash deficit, timing mismatches, restrictions on cash availability and an appropriate headroom policy.

B.10 Steering Committee Dashboard

The dashboard should be short enough to govern from, but linked to the controlled records beneath it. A recommended one-page structure is:

Dashboard block	Minimum content
Executive status	Overall status; reporting date; change since prior report; sponsor message.
Decisions required	Decision ID; decision-maker; deadline/constraint; recommendation; consequence of delay.
Critical path	Activities on or threatening the critical path; recovery action; owner.
Funding	Approved funding; forecast maximum deficit; headroom; variance; next funding event.
Top risks	Risk ID; movement; residual severity; mitigation; escalation.
Retained business	Customer, revenue, R&D, key-person, service and supply indicators.
Workstream status	Governance, diagnostic, operations, tax, labor, finance, transaction/route, environment, IT/data.
Record integrity	Missing advice, unsigned approvals, unsupported assumptions, evidence gaps and overdue decisions.

B.11 Controlled Change Procedure

A project assumption becomes obsolete when new facts emerge from consultation, due diligence, valuation, environmental investigation, customer transition, asset marketing, tax analysis or liquidity performance. The response is a controlled change, not an undocumented adjustment.

- Identify the changed fact and its source.
- Identify every affected activity, dependency, decision, risk and financial line.
- Obtain the required professional assessment and owner validation.
- Quantify schedule, cost, liquidity, tax, workforce and retained-business effects.
- Determine whether an approved decision must be reopened.
- Record approval, conditions, dissent and effective date.
- Issue a new controlled baseline while preserving the prior version.

B.12 Master Prompt for an AI-Enabled Working Environment

The following prompt is intended to be used after the Guide, the approved restructuring plan, project facts and relevant professional advice have been uploaded into an appropriately secure environment. It should be adapted to the system used and the project’s confidentiality and privilege protocol.

Act as the controlled project-analysis assistant to the Steering Committee responsible for the Italian restructuring described in the uploaded materials.

SOURCE DISCIPLINE

1. Treat the approved Group plan, confirmed project facts and signed professional advice as project-specific sources.
2. Treat An Execution Guide to Italian Downsizing and Exit as contextual professional literature, not as authority replacing current law or case-specific advice.
3. Never invent a fact, date, duration, statutory deadline, legal conclusion, valuation, cost, probability, decision-maker or approval.
4. When sources conflict, identify the conflict and do not resolve it silently. Apply the source hierarchy in Appendix B.
5. For every material statement, identify the source, source date, responsible owner and confidence/status.

REQUIRED OUTPUT

Produce a controlled execution package containing:

- A. facts confirmed;
- B. facts still required, with owner and reason required;
- C. immediate preservation actions;
- D. integrated diagnostic: remains / transfers / terminates / unresolved;
- E. master activity register using Appendix B activity IDs, adding project-specific IDs where required;
- F. dependencies and a draft Gantt chart, distinguishing legal constraints, project assumptions and target dates;
- G. critical path and schedule sensitivities;
- H. decision gates, accountable decision-makers, required evidence and stop conditions;
- I. RACI and reserved-matters matrix;
- J. integrated risk register linked to activities and financial lines;
- K. preliminary cost, cash-flow, tax and funding model consistent with Appendix A;
- L. alternative routes and the facts that would trigger reconsideration of the selected route;
- M. evidentiary index and missing-document list;
- N. questions requiring qualified Italian or other jurisdictional advisers;
- O. one-page Steering Committee dashboard.

VALIDATION RULES

- Mark each item CONFIRMED, ADVISED, ASSUMED, SCENARIO, CONFLICTING or MISSING.
- Mark each legal proposition CURRENT-LAW VERIFICATION REQUIRED unless supported by current project advice.
- Do not present a draft Gantt as final until owners validate dependencies and durations.
- Do not net severe-case gross exposure against probability-weighted recoveries.
- Do not authorize or recommend an irreversible action where a decision-gate condition is unmet.
- Preserve the Italian board's non-delegable duties and identify any conflict between Group instructions and Italian-entity interests.
- Highlight any fact suggesting liquidity deterioration, creditor prejudice or the need for CNC/CCII assessment.

OUTPUT FORMAT

Begin with a five-line executive assessment. Then provide: (1) blocking issues; (2) decisions required; (3) structured registers in tables; (4) the Gantt data table; (5) financial-model inputs and missing inputs; (6) adviser questions; and (7) an assumptions and limitations statement. End with a machine-readable JSON object conforming to §B.13.

B.13 Machine-Readable Data Contract

The following object defines the minimum structure expected from the AI output. It is a schema illustration, not executable software and not an independent source of legal authority.

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{
  "project": {
    "name": "string",
    "reporting_date": "YYYY-MM-DD",
    "entities": ["string"],
    "sites": ["string"],
    "approved_objective": "string",
    "retained_business": "string"
  },
  "facts": [
    {
      "fact_id": "FACT-001",
      "statement": "string",
      "status": "CONFIRMED|ADVISED|ASSUMED|SCENARIO|CONFLICTING|MISSING",
      "source": "string",
      "source_date": "YYYY-MM-DD|null",
      "owner": "string",
      "confidence": "high|medium|low"
    }
  ],
  "activities": [
    {
      "activity_id": "D-01",
      "workstream": "string",
      "description": "string",
      "predecessor_ids": ["string"],
      "dependency_type": "FS|SS|FF|SF|none",
      "owner": "string",
      "accountable_approver": "string",
      "duration": null,
      "duration_source": "project owner|required",
      "legal_constraint": "string|null",
      "decision_gate": "DG-01|null",
    }
  ]
}
```

```

    "evidence_required": ["string"],
    "status": "string",
    "critical_path": false
  }},
  "decisions": [{
    "decision_id": "DEC-001",
    "decision_maker": "string",
    "required_evidence": ["string"],
    "stop_condition": "string",
    "status": "open|conditional|approved|rejected|superseded"
  }],
  "risks": [{
    "risk_id": "RSK-01",
    "event": "string",
    "cause": "string",
    "effect": "string",
    "owner": "string",
    "controls": ["string"],
    "expected_value": null,
    "severe_case_gross": null,
    "linked_activity_ids": ["string"]
  }],
  "financial_model": {
    "currency": "EUR",
    "period_granularity": "project-specific",
    "gross_execution_cost": null,
    "continuing_and_stranded_cost": null,
    "recoveries_and_avoided_cost": null,
    "tax_and_regulatory_cash": null,
    "disruption_cost": null,
    "maximum_cumulative_cash_deficit": null,
    "approved_funding": null,
    "headroom": null,
    "missing_inputs": ["string"]
  },
  "adviser_questions": [{
    "question_id": "AQ-001",
    "discipline": "corporate|tax|labor|insolvency|environmental|valuation|other",
    "question": "string",
    "blocking": true,
    "linked_gate": "DG-01|null"
  }]
}

```

B.14 Quality-Control Tests Before Use

Test	Required result
Completeness	Every material workstream, entity, site, employee population, asset class and continuing liability is represented.
Traceability	Every material fact, assumption, cost, risk and decision links to a source and owner.
Authority	Every decision identifies the correct corporate body or delegate; board duties are not displaced by a RACI label.
Sequencing	No activity is shown as executable before its mandatory predecessor, procedure or decision gate.
Current law	Statutory rules and deadlines have been confirmed for the facts and review date by the relevant adviser.
Financial integrity	Cash, P&L and tax views reconcile; maximum deficit is calculated; severe-case exposure remains visible.
Operational integrity	Receiving capacity, retained business, IT/data, supply and knowledge-transfer requirements are tested.
Conflict control	Conflicts of local management, Group direction, advisers and delegated executives are recorded and managed.
AI integrity	Missing inputs and source conflicts remain visible; no unsupported certainty is introduced.
Identifier integrity	Every identifier is unique within a reserved namespace: activity, decision gate, risk, fact, decision and adviser question IDs cannot collide.

Test	Required result
Version control	Baseline, changes, approvals and superseded outputs are preserved.

B.15 Final Governance Note

This Appendix can be used whether the Italian execution is coordinated by the existing board, a delegated executive, an independent CRO or another properly documented model. It does not make the appointment of a CRO mandatory. Its purpose is to ensure that, whatever model is selected, there is one controlled architecture connecting facts, authority, workstreams, dependencies, risk, funding, decisions and evidence.

In a case such as Project Barolo, the breadth of the workstreams, the conflict affecting local management, the need to protect the retained business and the distance between Headquarters and Italian execution may support the appointment of an independent, professionally qualified CRO under the conditions developed in Chapter 7. That conclusion remains a governance recommendation to be tested against the facts, not a substitute for the architecture set out above.

END STATE Completion requires a stable retained business, assigned residual obligations, adequate funding, a complete evidentiary record and an Italian board able to explain every material decision.