

## PRESENTATION

Anyone venturing into Italian commercial law is immediately confronted with a set of regulations containing definitions of pivotal significance within the sector. Examples include Article 2082 of the Civil Code on the entrepreneur or business owner; Article 2135 on the agricultural entrepreneur; Article 2195 on the commercial entrepreneur, and Article 2555 defining a business or going concern. Moving on to the field of commercial law, the first section on entrepreneurs and undertakings is followed by a further section on companies, which starts by defining a partnership/company agreement as set out in Article 2247 of the Civil Code.

All these terms are used in everyday language, particularly by the economic and business sectors. Any discussion of commercial law comes with the caveat that, apart from the obvious connections, an entrepreneur is defined quite differently by economists and legislators. This is not so much because of the differences between them, but because of their different purposes: economists use descriptions intended to describe reality, while the definitions used by legislators (or at least those referred to here) serve the purpose of setting out the facts, i.e. defining the scope of a certain discipline. It is not the job of legislators to describe who the entrepreneur is. Instead their task is to build a framework and identify its scope. Thus, the definition of entrepreneur is relevant when applying a set of rules. When we go on to differentiate between agricultural entrepreneurs and commercial entrepreneurs, further provisions are added to that rule set. In the same way, the definition of a business is relevant when applying a certain set of rules concerning that business's operations, while the definition of a company, in conjunction with the partnership agreement, is relevant for applying the complex set of rules that makes up company law.

When interpreting the rules that set out these definitions, consistency is crucial for establishing their scope with the relevant discipline. The various components of the rules concerning the entrepreneur refer to the market and therefore it makes sense to apply them only to those who operate on the market or in accordance with market rules. As Giulia Garesio explains, an entrepreneur who carries out a productive activity but uses the goods or services produced only for their personal or family needs, without ever placing them on the market, is not an entrepreneur in the legal sense. Giulia Garesio also tells us that someone who carries out an economic activity for the sole purpose of supplying goods or services and is therefore systematically loss-making is also not an entrepreneur, because that person operates outside the rules of the market.

These remarks could give the impression that we are only talking about the legal system, since we are looking at independent definitions of terms that are also used by

economists and their interpretation in the light of the rules establishing the discipline. Yet this interpretation would be completely false since the rules on entrepreneurs and the enterprise, on the one hand, and companies, on the other, are closely linked to economic reality. The legislator takes the economic situation as a starting point for laying down rules that, promote, regulate and define that situation. There is such a close and necessary correlation between commercial law and economics that commercial law is sometimes referred to as the private law of economics.

Maurizio Irrera has planned and coordinated the work presented here from this perspective, and all the authors have approached it in the same spirit. Herein lies the fundamental key to reading the work.

This view is easily demonstrated, given the close scrutiny applied to the many topics covered. We need only consider the pages dedicated by Maria Di Sarli to businesses, capital transactions and extraordinary transactions, with a steady eye on economic and corporate aspects. Similarly, Giuseppe A. Policaro devotes his attention to the economic value of trademarks; Elena Fregonara explains accounting systems in partnerships; Luciano Quattrocchio tells us about financial statements and consolidated financial statements. In other chapters dealing with the performance of economic activity and therefore company management and governance in joint-stock companies, Maurizio Irrera and Bianca Maria Scarabelli deal extensively with directors, Luciano Quattrocchio with auditing and Alessandro Monteverde with financing. Other passages are specifically dedicated to economic profiles, explaining, for example, the economic reasons why operators opt to run specific types of companies, as in the conclusion to the chapter written by Elena Fregonara on the notion of companies and the classification of company types. Irene Pollastro's introduction to the section on joint-stock companies also explains the legal discipline from an economist's viewpoint.

When unpicking the close relationship between commercial law and economics, we obviously need to zoom in on the two disciplines, but also to zoom out to the wider, multidisciplinary context. This shift in focus is one of the book's most distinctive qualities. For example, the discussion of tax law covers the topic of real estate companies and Elena Fregonara tells us about tax profiles, which are now so vital to reconstructing the organisation from the perspective of commercial law.

The final part of the work, providing a brief but incisive discussion of procedural profiles, will be a very welcome and interesting new addition, especially for students enrolled in departments that used to be part of the Economics faculty. Marco Sergio Catalano covers ordinary proceedings and corporate arbitration in two separate chapters. Here too, a multidisciplinary approach is relevant and necessary when attempting to understand many fundamental institutions of commercial law. One immediate example of this is the invalidity of shareholders' resolutions, liability actions, and the reporting of serious irregularities to the court. It goes without saying that the arbitration procedure is now becoming increasingly important, particularly in the field of commercial law.

In his *Introduction*, Maurizio Irrera uses the compelling metaphor of startrails in the firmament of commercial law. These heavenly bodies are in constant motion, their trajectories crossing one another. Sometimes they are extinguished, sometimes they be-

come brighter, sometimes they wane then wax, and sometimes they travel along irregular orbits. This is a very apt analogy for an ever-changing system, because the economic and social situation is also constantly changing. The sky would be as clear as possible in an ideal world, but in the real world commercial law students cannot hope to chart a course through those heavens without a little help.

*Oreste Cagnasso*

