
# GRC²+ – The Formula for Sustainable Restructuring – Part 1: Introduction and Background

"*Crisis is often the mother of change.*" – Holger Rathgeber

Over the years, the responsibilities placed on company directors to uphold "good corporate governance" have steadily increased. And yet, when examining the root causes of business crises and insolvencies, one theme remains a constant: "management error" is frequently cited as the decisive factor across countless analyses.
More recently, we've seen a rise in repeat insolvencies, where poor restructuring leadership seems a likely contributor. Transformation projects also continue to fail with striking regularity. In many cases, management doesn't just falter during a company's existential crisis—it fails well before it.

## The Role of GRC Systems in Corporate Leadership

Aligning corporate or restructuring leadership with established standards may not entirely prevent a crisis, but it can at least mitigate its effects—and provide a foundation for necessary operational transformation.

Adopting a modified, decision-focused approach to integrating Governance, Risk and Compliance (GRC) systems also opens the door to greater efficiency than the implementation of disparate individual systems. This article summarises the key considerations from a recent, practice-oriented piece by the author (ZInsO 2025, 191).

## Background

On closer inspection, the frequent causes of insolvency—poor corporate governance, inadequate restructuring or failed transformation—are largely attributable to shortcomings in corporate decision-making processes.
These processes can be significantly improved when leadership incorporates governance, risk management and compliance not as isolated functions, but as an integrated system. A GRC framework brings together capabilities that enable an organisation to reliably achieve its objectives, manage uncertainty, and act with integrity.

The concept rests on the integration of three disciplines:

- Governance establishes the legal and operational framework shaped by the company's constitution—its mission, strategy and internal policies.

- Risk Management identifies, analyses and mitigates potential threats, highlighting the economic limits of what the business can feasibly achieve.
- Compliance defines the legal and reputational boundaries within which the company must operate.

This GRC approach is underpinned by controlling mechanisms and complemented by oversight bodies such as the Internal Control System (ICS) and Internal Audit (IA). Overemphasising any one of the three pillars can distort decision-making. Only a truly integrated approach enables leadership to act effectively and efficiently within a clearly defined framework.

## The Evolution of GRC Disciplines

Corporate governance evolved in response to a series of corporate scandals—such as the collapse of Philipp Holzmann AG—spurring reforms that ultimately led to the adoption of “soft law” frameworks, particularly the German Corporate Governance Code (DCGK).

Risk management has also undergone transformation. As early as 1998, the KonTraG (Control and Transparency in Business Act) required major public companies to establish risk detection systems. However, thanks to robust economic conditions and strong exports, German businesses remained relatively risk-insensitive for some time.

It took COVID-19, with its supply chain disruptions and forced shift to remote working, to trigger a broader awareness—extending even to small and mid-sized enterprises (SMEs).

The term "compliance" originally stemmed from medicine, referring to a patient’s adherence to a prescribed regimen. In the late 1990s, it entered German business law in response to various corporate scandals.
Today, compliance goes far beyond simple legal adherence—it’s about fostering a corporate culture where lawful and ethical conduct is second nature. The DCGK now defines compliance as the executive board’s responsibility for ensuring compliance with both legal requirements and internal policies.

## Legal Framework and Case Law

Since the DCGK was first introduced in 2002, the legal expectations around GRC components have become significantly stricter. Governance disclosure obligations have been expanded via EU directives, particularly around corporate social responsibility.

KonTraG provisions have been strengthened by the Restructuring and Insolvency Framework Act (StaRUG, 2022) and the Financial Market Integrity Strengthening Act (FISG, 2021). High-profile events like the Siemens corruption scandal and steep penalties under laws like the GDPR have emphasised the need for robust compliance systems.

Statutory obligations under Sections 30 and 130 of the German Administrative Offences Act (OWiG), and newer requirements such as the Supply Chain Due Diligence Act, have further increased the pressure on companies to maintain comprehensive compliance frameworks.

The courts have also played a key role. In 1997, the Federal Court of Justice (BGH) confirmed that management has broad discretion in decision-making, as long as it remains within legal boundaries. However, courts also expect directors to monitor the company's financial health continuously and to act promptly at the first signs of trouble. Inadequate risk management systems can expose directors to liability—and potentially jeopardise D&O insurance coverage.

## SME Skepticism and Practical Implications

For many SMEs in Germany—especially owner-managed firms—this evolving regulatory landscape alone is unlikely to prompt change. Often, a culture of trust prevails, and concerns about liability are brushed off with remarks like: "We've already mortgaged the house for our bank loans—if this fails, it's the end anyway." In short, the argument of legal obligation carries limited weight.

The picture is different for SMEs with external managing directors. Without a proper GRC system in place, it will become increasingly difficult for them to invoke the "business judgement rule", as we'll explore in later sections.

Even more so, those leading transformations, restructurings, or insolvency proceedings will face growing challenges in avoiding liability for project failures—unless they can demonstrate that appropriate systems were in place to professionalise the decision-making process during restructuring.
This highlights the need not only to meet regulatory and legal standards, but also to derive tangible value from doing so. Companies that successfully implement the integrated GRC approach described here will be better equipped to meet future challenges—and to ensure long-term sustainability through more robust, risk-informed decision-making.