ORGANISATION, MANAGEMENT AND CONTROL MODEL PURSUANT TO (IT.) LEGISLATIVE DECREE 231/2001

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GENERAL PART

Approved by the Board of Directors on 2 April 2009 and updated by the Board of Directors on 26 February 2015, 27 July 2018, 31 March 2021 and 28 July 2022

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GENERAL PART

CHAPTER 1

DESCRIPTION OF THE REGULATORY FRAMEWORK

1.1 Introduction.

By It. Legislative Decree 8 June 2001 no. 231 (hereinafter, "(It.) Legislative Decree 231/2001") implementing the powers conferred to the Government by Art. 11 of the (It.) Law of 29 September 2000, no. 300[1], the "*liability of entities for administrative offences resulting from crimes*" was regulated.
In particular, these rules apply to entities with legal personality and to companies and associations, including those without legal personality.

(It.) Legislative Decree no. 231/2001 primarily originates from a number of international and EU conventions ratified by Italy that require forms of liability of collective entities for certain types of offences.

According to the regulations set forth by (It.) Legislative Decree No. 231/2001, as a matter of fact, companies can be held "liable" for certain intentional offences committed or attempted, in the interest or to the advantage of the companies themselves, by members of the company's senior management (senior executives or simply persons occupying top positions) and by those who are subject to the direction or supervision of the latter (Art. 5(1) of (It.) Legislative Decree no. 231/2001).[2]

The administrative liability of companies is independent of the criminal liability of the natural person who has committed the offence, and stands alongside the latter.

This broadening of liability essentially aims to involve in the punishment of certain offences the assets of companies and, ultimately, the economic interests of shareholders, who, until the entry into force of the decree under review, did not suffer direct consequences from the offences committed, in the interest or to the advantage of their company, by directors and/or employees.

It. Legislative Decree no. 231/2001 innovates the Italian legal system insofar as companies are now directly and independently subject to both fines and bans in relation to offences ascribed to persons functionally linked to the company pursuant to Art. 5 of the decree.

The company's administrative liability is, however, excluded if the company has, among other things, adopted and effectively implemented, before the offences were committed, organisational, management and control models suitable for preventing the offences themselves; these models may be adopted on the basis of codes of conduct (guidelines) drawn up by associations representing companies, including Confindustria (Italian Association of Industrial Enterprises), and communicated to the Ministry of Justice.

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[1] It. Legislative Decree 231/2001 and (It.) Law 300/2000 are published in the (It.) Official Journals of 19 June 2001 no. 140 and 25 October 2000 no. 250 respectively.
[2] Art. 5(1) of (It.) Legislative Decree no. 231/2001: "Liability of the entity - *The entity is liable for offences committed in its interest or to its advantage: a) by persons who hold positions of representation, administration or management of the entity or of one of its organisational units with financial and functional autonomy, as well as by persons who exercise, including de facto, the management and control of the entity; b) by individuals subject to the management or supervision of one of the persons referred to in point a)*".

The administrative liability of the company is, in any case, excluded if the senior executives and/or their subordinates have acted exclusively in their own interest or in the interest of third parties.[3]

1.2 Nature of liability.

With reference to the nature of administrative liability *under* (It.) Legislative Decree no. 231/2001, the illustrative report on the decree emphasises the "*birth of a tertium genus that combines the essential features of the criminal and administrative systems in an attempt to reconcile the reasons of preventive effectiveness with those, even more inescapable, of maximum guarantee*".

As a matter of fact, (It.) Legislative Decree no. 231/2001 has introduced a form of "administrative" liability of companies - in accordance with Art. 27 of It. Constitution[4] but with numerous points of contact with "criminal" liability - into the Italian legal system.

In this sense, see - among the most significant - Articles 2, 8 and 34 of (It.) Legislative Decree no. 231/2001, where the first reaffirms the principle of legality typical of criminal law; the second affirms the autonomy of the entity's liability with respect to the ascertainment of the liability of the natural person, perpetrator of the criminal conduct; the third provides for the circumstance that such liability, dependent on the commission of a crime, is ascertained within the context of criminal proceedings and is, therefore, assisted by the guarantees of criminal proceedings. Consider, moreover, the afflictive nature of the sanctions applicable to the company.

1.3 Perpetrators of the offence: persons in senior positions and persons supervised by others.

As mentioned above, according to (It.) Legislative Decree no. 231/2001, the company is liable for offences committed in its interest or to its advantage:

- by "persons who hold positions of representation, administration or management of the entity or of one of its organisational units with financial and functional autonomy, as well as persons who exercise, including de facto, the management and control of the entity" (the above-mentioned persons "in top positions" or senior executives; art. 5, par. 1, letter a) of (It.) Legislative Decree no. 231/2001);
- by persons subject to the supervision of one of the senior executives (so-called persons subject to the supervision of others; Art. 5, par. 1, letter b) of (It.) Legislative Decree no. 231/2001).

It should also be reiterated that the company shall not be held liable, by express legislative provision (Art. 5, par. 2 of (It.) Legislative Decree no. 231/2001), if the above-mentioned persons have acted in their own exclusive interest or in the interest of third parties.[5]

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[3] Art. 5(2) of (It.) Legislative Decree no. 231/2001: "Liability of the entity - *The entity shall not be liable if the persons referred to in paragraph 1 have acted exclusively in their own interest or in the interest of third parties*".

[4] Art. 27 paragraph 1 of the Constitution of the Italian Republic: "*Criminal liability is personal*".

[5] The Explanatory Report to (It.) Legislative Decree no. 231/2001, in the part relating to Art. 5, par. 2, (It.) Legislative Decree no. 231/2001, states: "*The second paragraph of Article 5 of the scheme in question borrows the closing clause from subsection (e) of the proxy and excludes the liability of the entity when the natural persons (whether senior or subordinate) have acted exclusively in their own interest or in the interest of third parties. The rule stigmatizes the case of "breaking" of the pattern of organic identification; that is, it refers to the cases in which the crime committed by the natural person is in no way attributable to the entity because it was not even partially committed in the interest of the latter. And it should be noted that, where the manifest extraneousness of the moral person is thus established, the court does not even have to verify whether the moral person has by chance derived an advantage (the provision thus operates as an exception to the first paragraph).*"

1.4 Offences.

The offences for which the entity may be held liable under (It.) Legislative Decree no. 231/2001 - if committed in its interest or to its advantage by persons qualified *under* Art. 5, par. 1 of the Decree itself, or in the case of specific legal provisions referring to the Decree - may be included, for convenience of exposition, in the following categories:

- **offences against the public administration** (such as corruption, embezzlement to the detriment of the State, fraud to the detriment of the State and computer fraud to the detriment of the State, referred to in Arts. 24 and 25 of (It.) Legislative Decree no. 231/2001)[6];
- **offences against public faith** (such as counterfeiting money, public credit cards and revenue stamps, referred to in Art. 25-*bis* (It.) Legislative Decree 231/2001)[7];

[6] More precisely, these are the following offences: embezzlement to the detriment of the State or the European Union (Art. 316-*bis* of the Criminal Code); undue receipt of funds to the detriment of the State (Art. 316-*ter* of the Criminal Code); fraud in public supply (Art. 356 of the Criminal Code), aggravated fraud to the detriment of the State (Art. 640, par. 2, no. 1, (It.) Criminal Code); aggravated fraud to obtain public funds (Art. 640-*bis* of the (It.) Criminal Code); computer fraud to the detriment of the State or other public body (Art. 640-ter of the (It.) Criminal Code); fraud in agriculture (Art. 2, (It.) Law no. 898/1986); bribery for the exercise of office (Art. 318, 319 and 319-*bis* of the Criminal Code); bribery of a person in charge of a public service (Art. 320 of the (It.) Criminal Code); bribery in judicial proceedings (Art. 319-*ter* of the (It.) Criminal Code); incitement to corruption (Art. 322 (It.) Criminal Code); trafficking in unlawful influence (Art. 346-*bis* of the (It.) Criminal Code); embezzlement (Art. 324, par. 1 of the (It.) Criminal Code); embezzlement by profiting from the error of others (Art. 316 of the (It.) Criminal Code); abuse of office (Art. 323 of the (It.) Criminal Code); extortion (Art. 317 of the (It.) Criminal Code); undue inducement to give or promise benefits (Art. 319-*quater* of the (It.) Criminal Code); bribery, incitement to bribery and extortion of members of the European Communities, officials of the European Communities, foreign states and international public organisations (Art. 322-*bis* of the (It.) Criminal Code). (It.) Law no. 190/2012 introduced into the (It.) Criminal Code and referred to in the Decree the provision of Art. 319-*quater* under the heading "Undue inducement to give or promise benefits". By (It.) Law no. 69 /2015, the sanctions regulations on offences against the Public Administration were amended to provide for stiffer penalties for offences under the (It.) Criminal Code. Art. 317 of the (It.) Criminal Code) "Concussion", which now also provides - as the active party of the offence - for the Person in Charge of a Public Service in addition to the Public Official. By (It.) Law no. 3/2019, the offence referred to in Art. 346 *bis* of the (It.) Criminal Code under the heading "Trafficking in unlawful influence". The same law also provided for tightening the bans that can be imposed on the Entity and introduced certain benefits for the Entity in terms of a reduction in the duration of bans in the event that the Entity, prior to the first instance judgment, has taken steps to prevent the criminal activity from being taken to further consequences, to ensure the evidence of the offences and the identification of the perpetrators or the seizure of the sums or other benefits transferred and has eliminated the organisational deficiencies that led to the offence through the adoption and implementation of organisational models capable of preventing offences of the kind committed. Most recently, (It.) Legislative Decree no. 75/2020, in force as of 30 July 2020, concerning the implementation of Directive (EU) 2017/1371 (so-called PIF Directive) on "the fight against fraud to the Union's financial interests by means of criminal law", provided for the addition to the catalogue of predicate offences in Art. 24, (It.) Legislative Decree no. 231/2001 with the offence of fraud in public procurement (Art. 356 of the Criminal Code) and fraud in agriculture (Art. 2 (It.) Law no. 898/1986 concerning Community aid in the agricultural sector) and included the European Union among the subjects to whose detriment the offence giving rise to the Entity's liability is committed. The same (It.) Legislative Decree no. 75/2020, included among the predicate offences for the administrative liability of entities under Art. 25, (It.) Legislative Decree 231/2001 the offences of embezzlement (Art. 324, par. 1 of the (It.) Criminal Code), embezzlement by profiting from the error of others (Art. 316 of the (It.) Criminal Code) and abuse of office (Art. 323 of the (It.) Criminal Code), where the act "offends the financial interests of the European Union"

[7] Art. 25-*bis* was introduced in (It.) Legislative Decree No. 231/2001 by Art. 6 of (It.) Law Decree 350/2001, converted into law, with amendments, by Art. 1 of (It.) Law no. 409/2001. These are the offences of counterfeiting money, spending and introducing counterfeit money into the State in a complicit manner (Art. 453 of the (It.) Criminal Code, as amended by (It.) Legislative Decree 21 June 2016, no. 125); alteration of currency (Art. 454 of the (It.) Criminal Code); spending and introducing counterfeit money into the State, without concert (Art. 455 of the (It.) Criminal Code); passing counterfeit money received in good faith (Art. 457 of the (It.) Criminal Code); counterfeiting of revenue stamps, introduction into the State, purchase, possession or putting into circulation of counterfeit revenue stamps (Art. 459 of the (It.) Criminal Code); counterfeiting watermarked paper in use for the manufacture of public credit cards or stamps (Art. 460 of the (It.) Criminal Code); manufacture or possession of watermarks or instruments intended for the counterfeiting of money, revenue stamps or watermarked paper (Art. 461 of the (It.) Criminal Code); use of forged or altered revenue stamps (Art. 464 of the (It.) Criminal Code). The

- **corporate offences** (such as false corporate communications, obstruction of control, unlawful influence on the shareholders" meeting, referred to in Art. 25-*ter* (It.) Legislative Decree 231/2001)[8];
- **offences relating to terrorism and subversion of the democratic order** (referred to in Art. 25-*quater,* (It.) Legislative Decree 231/2001)[9];

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regulatory provision was then also extended to counterfeiting, alteration or use of trademarks or distinctive signs or of patents, models and designs (Art. 473 of the (It.) Criminal Code) and the introduction into the State and trade of products with false signs (Art. 474 (It.) Criminal Code) with the amendment introduced by Art. 17, par. 7(a), no. 1) of (It.) Law 23 July 2009.

[8] Art. 25-ter was introduced in (It.) Legislative Decree No. 231/2001 by Art. 3, (It.) Legislative Decree no. 61/2002. This concerns, in particular, the offences of false corporate communications (Art. 2621 of the (It.) Civil Code and, if the act is minor, Art. 2621 *bis* of the (It.) Civil Code); of false corporate communications by listed companies (Art. 2622 of the (It.) Civil Code); impeded control (Art. 2625(2) of the (It.) Civil Code); fictitious capital formation (Art. 2632 of the (It.) Civil Code); undue return of contributions (Art. 2626 of the (It.) Civil Code); illegal distribution of profits and reserves (Art. 2627 of the (It.) Civil Code); unlawful transactions involving shares or quotas of the company or its parent company (Art. 2628 of the (It.) Civil Code); transactions to the detriment of creditors (Art. 2629 of the (It.) Civil Code); failure to disclose a conflict of interest (Art. 2629-*bis* of the (It.) Civil Code); undue distribution of company assets by liquidators (Art. 2633 of the (It.) Civil Code); bribery between private individuals (Art. 2635 of the (It.) Civil Code); incitement to bribery among private individuals (Art. 2635-*bis* of the (It.) Civil Code); unlawful influence on the shareholders" meeting (Art. 2636 of the (It.) Civil Code); market rigging (Art. 2637 of the (It.) Civil Code); obstructing the exercise of the functions of public supervisory authorities (Art. 2638 of the (It.) Civil Code). It. Legislative Decree no. 39/2010 repealed the provision of Art. 2624 of the (It.) Italian Civil Code under the heading "False statements in the reports or communications of auditing companies", which was thus also annulled in (It.) Legislative Decree no. 231/2001. Art. 2635 of the (It.) Civil Code, under the heading "Bribery between private individuals", was introduced into the Decree by (It.) Law 6 November 2012, no. 190. Subsequently, (It.) Legislative Decree no. 38 of 15 March 2017 made amendments to Art. 2635 of the (It.) Civil Code, eliminating the need for the existence of the requirement of harm in order for the offence to be committed, and including additional corporate figures among the active parties; Article 2635-*bis* of the (It.) Civil Code was also introduced, entitled "Incitement to bribery among private individuals". An accessory penalty of temporary disqualification from the executive offices of legal persons was also introduced for those convicted of committing, among others, the offences referred to in Arts. 2635 and 2635-*bis* of the (It.) Civil Code. Lastly, Art. 2635 c.c. was amended by (It.) Law 9 January 2019, no. 3, excluding prosecution on complaint by the offended person.

By (It.) Law no. 69 of 2015, containing "Provisions on offences against the Public Administration, mafia-type associations and false accounting", the offences p. and p. were amended by Art. 2612 and 2622 of the (It.) Civil Code; in particular, the previous threshold of punishability for false accounting has been eliminated and a specific liability has been established for directors, general managers, managers in charge of drawing up accounting documents, auditors, and liquidators of listed companies or companies that control companies issuing listed financial instruments or that appeal to the public. Also introduced was Art. 2621-*bis* of the (It.) Civil Code, "petty acts", for the commission of the conduct referred to in Art. 2621 of the (It.) Civil Code characterised as minor in view of the nature, size of the company and the manner and effects of the conduct and Art. 2621-*ter* of the (It.) Civil Code, which provides for a cause of non-punishability for facts of particular tenuousness.

[9] Article 25-*quater was* introduced into the (It.) Legislative Decree no. 231/2001 by Art. 3 of the (It.) Law of 14 January 2003, no. 7. These are "*offences for the purpose of terrorism or subversion of the democratic order, provided for by the Criminal Code and special laws*", as well as offences, other than those mentioned above, "*which have in any case been committed in violation of the provisions of Article 2 of the International Convention for the Suppression of the Financing of Terrorism, done at New York on 9 December 1999*". This Convention punishes any person who unlawfully and maliciously provides or collects funds knowing that they will be used, even in part, to commit: (i) acts intended to cause the death - or serious injury - of civilians, when the action is aimed at intimidating a population, or coercing a government or an international organisation; (ii) acts constituting offences under the conventions on: flight and navigation safety, protection of nuclear material, protection of diplomatic agents, suppression of attacks with the use of explosives. The category of "*offences for the purposes of terrorism or subversion of the democratic order, provided for by the Criminal Code and special laws" is* mentioned by the legislator in a generic manner, without indicating the specific rules whose violation would entail the application of this Article. One can, in any case, identify as main predicate offences Art. 270-*bis* (It.) Criminal Code *(Associations for the purpose of terrorism, including international terrorism or subversion of the democratic order*), which punishes anyone who promotes, constitutes, organises, directs or finances associations that propose the perpetration of violent acts for terrorist or subversive purposes, and Art. 270-*ter* (It.) Criminal Code *(Assistance to associates*) which punishes those who shelter or provide food, hospitality, means of transport, means of communication to any of the persons participating in associations with terrorist or subversive aims.

- **female genital mutilation criminal offences** (referred to in Art. 25-quater*1* (It.) Legislative Decree no. 231/2001)[10];
- **offences against the individual** (such as child prostitution, child pornography, trafficking in persons and reduction to or maintenance in slavery or servitude and the new offence of "illegal brokering and exploitation of labour" (so-called "caporalato"), referred to in Art. 25-*quinquies* (It.) Legislative Decree no. 231/2001)[11];
- **market abuse offences** (insider trading and market manipulation, referred to in Art. 25-*sexies* (It.) Legislative Decree no. 231/2001)[12];
- **transnational offences** referred to in Art. 10 of (It.) Law 16 March 2006, no. 146, of "Ratification and Execution of the United Nations Convention and Protocols against Transnational Organised Crime, adopted by the General Assembly on 15 November 2000 and 31 May 2001"[13];

On 24 August 2016, (It.) Law no. 153 of 28 July 2016, which ratified a number of international conventions on the repression of terrorist conduct.
They were therefore introduced into the (It.) Criminal Code by Art. 4 of the law in question, the new cases of:
- Financing of conduct for terrorist purposes (Art. 270-quinquies.1);
- Subtraction of seized property or money (Art. 270-quinquies.2):
- Acts of nuclear terrorism (Art. 280-*ter*).

[10] Art. 25-quater.1 was introduced in (It.) Legislative Decree no. 231/2001 by Art. 8 of the (It.) Law no. 7 of 9 January 2006 . These are the offences of female genital mutilation criminal offences (Art. 583-*bis* (It.) Criminal Code).

[11] Art. 25-*quinquies* was introduced in (It.) Legislative Decree no. 231/2001 by Art. 5 of the (It.) Law of 11 August 2003, no. 228 and amended by Art. 10 of the (It.) Law of 6 February 2006, no. 38. These are the offences of reduction to or maintenance in slavery or servitude (Art. 600 (It.) Criminal Code), trafficking in persons (Art. 601 (It.) Criminal Code), purchase and sale of slaves (Art. 602 (It.) Criminal Code), offences related to child prostitution and its exploitation (Art. 600-*bis* of the (It.) Criminal Code), child pornography and its exploitation (Art. 600-*ter* of the (It.) Criminal Code), possession of pornographic material produced through the sexual exploitation of minors (Art. 600-*quater* of the (It.) Criminal Code), tourist initiatives aimed at the exploitation of child prostitution (Art. 600-*quinquies* (It.) Criminal Code). - Then, as regards the introduction of the so-called "caporalato" crime, it should be noted that on 4 November 2016, (It.) Law no. 199 of 29 October 2016 that inserted in Art. 25 quinquies (It.) Legislative Decree no. 231/2001 the new offence of "unlawful brokering and exploitation of labour" (Art. 603 *bis* of the (It.) Criminal Code), which punishes the conduct of recruiting and hiring labour for the purpose of exploitative labour.

[12] Art. 25-*sexies* was introduced into (It.) Legislative Decree No. 231/2001 by Art. 9 of the (It.) Law of 18 April 2005, no. 62 (Community Law 2004). These are the offences of insider trading (Art. 184 (It.) Legislative Decree no. 58/1998) and market manipulation (Art. 185 (It.) Legislative Decree no. 58/1998).

[13] The definition of "transnational crime" is contained in Art. 3 of the same law no. 146/2006, which specifies that "*an offence punishable by a maximum term of imprisonment of no less than four years, where an organised criminal group is involved*" is considered to be such, with the additional condition that at least one of the following requirements is met "it is committed in *more than one* State" or "it*is committed in one State, but a substantial part of its preparation, planning, direction or control takes place in another State*" or "it is committed in one State*, but an organised criminal group engaged in criminal activities in more than one State is involved in it*" or "*it is committed in one State but has substantial effects in another State*" [art. (3(a), (b), (c) and (d)).
The transnational crimes in relation to which Art. 10 of (It.) Law no. 146/2006 provides for the administrative liability of entities, are as follows: associative offences under Art. 416 of the (It.) Criminal Code ("criminal association") and 416-*bis* of the (It.) Criminal Code ("mafia-type association"), in Art. 291-*quater* of the (It.) Presidential Decree 23 January 1973, no. 43 ("conspiracy to smuggle foreign tobacco") and Art. 74 of the (It.) Presidential Decree 9 October 1990, no. 309 ("association for the illegal trafficking of narcotic drugs or psychotropic substances"); offences concerning the "trafficking of migrants" referred to in Art. 12, paragraphs 3, 3-*bis*, 3-*ter* and 5 of (It.) Legislative Decree 25 July 1998, no. 286; offences concerning "obstruction of justice" under Art. 377-*bis* of the (It.) Criminal Code ("inducement not to make statements or to make false statements to the judicial authorities") and 378 of the (It.) Criminal Code ("Aiding and abetting").
It should be noted that, in this case, the extension of the offences entailing the liability of the entity was not effected - as previously - by the inclusion of further provisions into (It.) Legislative Decree no. 231/2001, but by means of an autonomous provision contained in the aforementioned Art. 10 of (It.) Law no. 146/2006, which establishes the specific administrative sanctions applicable to the offences listed above,

- **offences of culpable homicide and grievous or very grievous bodily harm**, committed in breach of the rules on accident prevention and the protection of hygiene and health at work (Art. 25-*septies* (It.) Legislative Decree no. 231/2001)[14];
- **offences of receiving stolen goods, money laundering and use of money, goods or benefits of unlawful origin, as well as self-laundering** referred to in the new Art. 25-*octies* of (It.) Legislative Decree no. 231/2001[15];
- **offences relating to non-cash payment instruments** (Art. 25 octies.1 (It.) Legislative Decree 231/01) article added by (It.) Legislative Decree no. 184/2021 implementing Directive (EU) 2019/713 on combating fraud and counterfeiting of non-cash means of payment[16].**computer crimes and unlawful processing of data** (Art. 24-*bis* (It.) Legislative Decree no. 231/2001 introduced by Art. 7 of the (It.) law of 18 March 2008, no. 48 "Ratification and Execution of the Council of Europe Convention on Cybercrime, done at Budapest on 23 November 2001, and Rules for the Adaptation of the Entire Legal System")[17].

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providing - by way of reminder - in the last paragraph that "*the administrative offenses provided for in this article are subject to the provisions of (It.) Legislative Decree* no. *8 June 2001, no. 231*".

[14] Art. 9 of (It.) Law of 3 August 2007, no. 123, replaced by Art. 300 of (It.) Legislative Decree no. 9 April 2008, no. 81 (so called Testo Unico Sicurezza, Consolidating Act on Public Safety) included the new Article 25-*septies* in (It.) Legislative Decree 231/2001. This provision extends the punishability of companies to the commission of the offences of "culpable homicide and grievous or very grievous bodily harm, committed in violation of the rules on accident prevention and on the protection of hygiene and health at work", referred to in Articles 589 and 590 (3) of the (It.) Criminal Code. As a result of such conduct, which can be classified as a crime committed by persons functionally linked to the company, in its interest or to its advantage, the latter shall be subject to a fine of no less than one thousand shares and, in the event of conviction for one of the aforementioned crimes, to bans for a period of no less than three months and no more than one year.
The inclusion of Article 25-*septies* in Section III, Chapter I of (It.) Legislative Decree no. 231/2001, entails the application, also with reference to the offences of culpable homicide and serious or very serious culpable lesions, committed in violation of the rules on accident prevention and on the protection of hygiene and health at work, of all the rules of (It.) Legislative Decree no. 231/2001 (including the assumption of the benefit or interest of the company, the exempting value of organisation, management and control models, the possibility of adopting such models on the basis of codes of conduct drawn up by associations representing companies).

In relation to the offences referred to in Articles 648, 648-bis and 648-*ter* of the (It.) Criminal Code, Art.63(3) of (It.) Legislative Decree of 21 November 2007, no.231 introduced Art.25-*octies* in the category of administrative liability offences by providing for fines and bans against entities with reference to the offences of receiving stolen goods, money laundering and using money, goods or benefits of unlawful origin, previously regulated in a transnational context. In addition, (It.) Law no.186 of 15 December 2014 establishes "Provisions against the emersion and return of capital held abroad' as well as strengthening the fight against tax evasion.[15] Provisions on self-laundering" in Art. 3, par. 3 introduced the new offence of self-laundering into the (It.) Criminal Code ; the same law, in Art. 3, par. 5 amended Article 25g of (It.) Legislative Decree of 8 June 2001, no. 231, by including the new case among the predicate offences for the administrative liability of entities. In addition, the further innovations introduced by (It.) Legislative Decree no. 195/2021 that amended the provisions of Art. 25-octies.1 (It.) Legislative Decree no. 231/2001 are in force starting from 15 December 2021; This is the implementation of Directive (EU) 2018/1673, on combating money laundering by means of criminal law, which required Member States to put in place stricter criminal law measures to punish and prevent offences related to the reuse of money or property derived from criminal activities. With this decree, the scope of application of the above-mentioned rules is extended as the asset to be laundered or the profit to be laundered, re-utilised or self-laundered may now derive from any crime (including culpable) or from an offence punishable by imprisonment of more than one year in the maximum or six months in the minimum.

[16] In relation to the offences of misuse and falsification of credit and payment cards (Art. 493-ter of the (It.) Criminal Code), Possession and distribution of computer equipment, devices or programmes intended to commit offences involving non-cash payment instruments (Art. 493-quater of the (It.) Criminal Code) and Computer fraud (Art. 640-ter of the (It.) Criminal Code) the latter offence now also "in the hypothesis aggravated by the carrying out of a transfer of money, monetary value or virtual currency".

[17] The (It.) Law of 18 March 2008, no. 48 "Ratification and Execution of the Council of Europe Convention on Cybercrime, done at Budapest on 23 November 2001, and Rules for the Adaptation of the

- **organised crime offences**. Art. 24-*ter* of the (It.) Decree establishes the extension of entity liability also with reference to the offences provided for in Articles 416, sixth paragraph, 416-*bis*, 416-*ter* and 630 of the (It.) Criminal Code and the offences provided for in Article 74 of the Consolidated Text referred to in Presidential Decree no. 309 of 9 October 1990;
- **offences against industry and trade**. Art. 25-*bis* of the (It.) Decree provides for the administrative liability of the company in relation to the offences referred to in Articles 513, 513-*bis*, 514, 515, 516, 517, 517-*ter* and 517-*quater* of the (It.) Criminal Code;[18]
- **copyright infringement offences**. Art. 25-*nonies* of the (It.) Decree provides for the administrative liability of the company in relation to the offences referred to in Articles 171, paragraph one, letter a-*bis*), and paragraph three, 171-*bis*, 171-*ter* and 171-*septies*, 171-*octies* of (It.) Law no. 22 April 1941, no. 633;
- **inducement not to make statements or to make false statements to the Judicial Authority** (Art. 377-*bis* (It.) Criminal Code), referred to in Article 25-*decies* of the (It.) Decree .
- **environmental offences**. Article 25-*undecies* of the (It.) Decree provides for the administrative liability of the company in relation to the offences set out in Articles 727-*bis* and 733-*bis* of the (It.) Criminal Code, some articles of (It.) Legislative Decree no. 152/2006 (Testo Unico in materia Ambientale, Consolidating Act on Environmental Issues), some articles of (It.) Law no. 150/1992 for the protection of endangered and dangerous animal and plant species, Art. 3, par. 6, of (It.) Law no. 549/1993 on the protection of stratospheric ozone and the environment and some articles of (It.) Legislative Decree no. 202/2007 on ship-source pollution . (It.) Law no. 68/2015 concerning "Provisions on crimes against the environment" ("Ecoreati Law"), which came into force on 29 May 2015, made changes to Art. 25 *undecies* of (It.) Legislative Decree No. 231/2001, extending the liability of companies for

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Entire Legal System" further broadened the offences that can give rise to corporate liability. Art. 7 of the aforementioned provision introduced Art. 24-*bis* under the heading "Computer crimes and unlawful processing of data". The new Art. 24-bis of (It.) Legislative Decree no. 231 of 2001 therefore introduces administrative liability for the entity in the event of the following offences being committed: Art. 615-ter (Unauthorised access to a computer or telecommunications system), Art. 617-quater (Illegal interception, obstruction or interruption of computer or telematic communications), Art. 617-quinquies (Installation of equipment designed to intercept, impede or interrupt computer or telematic communications), Art. 635-bis (Damage to computer information, data and programmes), Art. 635-ter (Damage to computer information, data and programmes used by the State or other public body or otherwise of public utility), Art. 635-quater (damaging computer and telecommunications systems), Art. 635 quinquies (damaging computer and telecommunications systems of public utility), Art. 615-quater (Unauthorised possession and distribution of access codes to computer or telematic systems), Art. 615-quinquies (Dissemination of computer equipment, devices or programmes intended to damage or interrupt a computer or telecommunications system), Art. 491-bis (Computer documents) and 640-quinquies (Computer fraud by the person providing electronic signature certification services) introduced by Art. 5(3) of the (It.) Law of 8 March 2008, no. 48, thus amending Title XIII of Book Two of the (It.) Criminal Code. Art. 24-bis was recently amended by (It.) Law Decree no. 105/2019, converted, with amendments, by (It.) Law no. 133/2019, containing "Urgent provisions within the scope of national cybersecurity and the regulation of special powers in sectors of strategic importance", which extended the criminal liability of Entities to the commission of the offences set out in Art. 1, par. 11 of the aforementioned (It.) Law decree.

[18] Art. 25-*bis* 1. was inserted by Art. 17, par. 7(b), (It.) Law no. 99/2009; in particular, the offences of disturbing the freedom of industry or trade (Art. 513 of the (It.) Criminal Code); unlawful competition with threats or violence (Art. 513-*bis*); fraud against national industries (Art. 514 of the (It.) Criminal Code); fraud in the exercise of trade (Art. 515 of the (It.) Criminal Code); sale of non-genuine foodstuffs as genuine (Art. 516 of the (It.) Criminal Code); sale of industrial products with false signs (Art. 517 (It.) Criminal Code); manufacture of and trade in goods made by usurping industrial property rights (Art. 517-*ter*); counterfeiting of geographical indications or designations of origin of agri-food products (Art. 517-*quater*).

environmental crimes to crimes of environmental pollution and environmental disaster as well as trafficking in and abandonment of highly radioactive material. By (It.) Legislative Decree no. 21 of 1 March 2018, which entered into force on 6 April 2018, Art. 260 of (It.) Legislative Decree no. 152 of 3 April 2006 and the same offence was included in the new Art. 452-*quaterdecies* of the (It.) Criminal Code due to the so-called "code reservation".

- **offences for the employment of illegally staying third-country nationals**. Art. 25-*duodecies* of the (It.) Decree provides for the administrative liability of the company in relation to the offences of Art. 2, par. 1 of (It.) Legislative Decree no. 16 July 2012, no. 109 in the case of using foreign workers without a residence permit or even an expired permit.[19]
- **offences of bribery between private individuals and incitement to bribery between private individuals**. Art. 25-*ter* 1, letter s *bis* of the (It.) Decree provides for the liability of the company in relation to the offences of Art. 2635 (It.) Civil Code[20]
- **crimes of racism and xenophobia.** Art. 25-*terdecies* introduced by (It.) Law 167/2017, provides for the liability of entities in relation to offences of racism and xenophobia[21]
- **fraud in sporting competitions, unlawful gaming or betting and gambling by means of prohibited devices** (Art. 25-*quaterdecies* of (It.) Legislative Decree no. 231/2001)[22];

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[19] On 4 November 2017, (It.) Law no. 161 of 17 October 2017 (entering into force on 19 November 2017), which also made changes to the text of (It.) Legislative Decree no. 231/01 and in particular art. 25-*duodecies* concerning the administrative offence of "Employment of third-country nationals whose stay is irregular" by adding three more (1-*bis*, 1-*ter* and 1-*quater*) to the single paragraph of this article, aimed at penalising certain unlawful immigration conduct. Art. 30 paragraph 4 of the law introduces fines and bans pursuant to (It.) Legislative Decree no. 231/01 in relation to the commission of the offences of "procuring unlawful entry" and "aiding and abetting illegal immigration", governed by Article 12 of (It.) Legislative Decree no. 286/1998 (Consolidation Act on Immigration).

[20] Amendments on the subject of bribery offences between private individuals were introduced by (It.) Legislative Decree 15 March 2017, no. 38, which came into force on 15 April 2017 and whose main innovations are as follows:

- New wording of Bribery between private individuals (Art. 2635 of the (It.) Civil Code), a predicate offence for the administrative liability of entities, pursuant to Art. 25 *ter* of (It.) Legislative Decree no. 231/2001 in which the new case is constructed in terms of an offence of mere conduct (or danger), i.e. without the prediction of an event of damage.
- Introduction of the autonomous offence of "Incitement to bribery among private individuals" (Art. 2635 *bis* of the (It.) Civil Code), which punishes the active party even when the offer or promise of money or other benefits to perform acts of disloyalty towards their company is not accepted.

Lastly, Art. 2635 c.c. was amended by (It.) Law 9 January 2019, no. 3, excluding prosecution on complaint by the offended person.

[21] On 12 December 2017, the new Art. 25-*terdecies*, dedicated to the prevention of crimes of racism and xenophobia (introduced by (It.) Law 167/2017, European Law 2017). In particular, these are the offences of propaganda, entrapment and incitement based on the denial, gross trivialisation or Shoah apology, crimes of genocide, crimes against humanity and war crimes; conduct that may also be characterised by a concrete danger of dissemination. By (It.) Legislative Decree no. 21 of 1 March 2018 was repealed Art. 3 of (It.) Law no. 654/1975 and the same type of offence "racism and xenophobia" was included in the new Article 604-*bis* of the (It.) Criminal Code as a result of the so-called "code reservation".

[22] (It.) Law no. 39/2019 included in the list of predicate offences of (It.) Legislative Decree no. 231/2001 the offences of fraud in sporting competitions, unlawful gaming or betting and gambling by means of prohibited devices.

The offences under consideration are regulated by (It.) Law no. 13 December 1989, no. 401. Precisely, Art. 1 of the aforesaid provision covers sporting fraud, the typical conduct of which consists in: (i) the offer or promise of money or other benefits or advantages to one of the participants in a sporting competition organised by the recognised federations, in order to achieve a result other than that resulting from the fair and proper conduct of the competition, or in the performance of other fraudulent acts aimed at the same purpose; (ii) the acceptance of the promise or giving of money or other benefits or advantages by the participant in the competition.

- **tax offences** (Art. 25-*quinquiesdecies* of (It.) Legislative Decree no. 231/2001)[23];
- **smuggling** (Art. 25-*sexiesdecies* of (It.) Legislative Decree no. 231/2001)[24] ;
- **non-compliance with bans** (Art. 23 of (It.) Legislative Decree no. 231/2001).
- **offences against cultural heritage (** Art. 25-*septiesdecies* and *duodevicies* of (It.) Legislative Decree no. 231/2001)[25].

On the other hand, the offence of abusive gaming or betting and gambling is provided for in Art. 4 of (It.) Law 401/1989 that punishes the exercise, organisation, sale of gaming and betting activities in violation of authorisations or administrative concessions.

[23] Article 25-*quinquiesdecies* was inserted by Art. 39, par. 2, (It.) Law decree 26 October 2019, no. 124, converted, with amendments, by (It.) Law 19 December 2019, no. 157, which entered into force on 25 December 2019. The latter introduced among the predicate offences of (It.) Legislative Decree no. 231/2001 the offences provided for in Art. 2, 3, 8, 10 and 11 of (It.) Legislative Decree no. 10 March 2000, no. 74. These are the offences of fraudulent misrepresentation by use of invoices or other documents for non-existent transactions; fraudulent misrepresentation by other means; issuing invoices or other documents for non-existent transactions; concealment or destruction of accounting documents; fraudulent evasion of tax.
Lastly, (It.) Legislative Decree 14 July 2020, no. 75, in force as of 30 July 2020, concerning the implementation of Directive (EU) 2017/1371 (so-called PIF Directive), concerning "the fight against fraud to the Union's financial interests by means of criminal law", extended the catalogue of tax offences subject to the administrative liability of legal persons to also include the offences of misrepresentation (Art. 4, (It.) Legislative Decree 74/2000); omitted declaration (Art. 5, (It.) Legislative Decree 74/2000); undue compensation (Art. 10-*quater*, (It.) Legislative Decree no. 74/2000), if committed within the framework of cross-border fraudulent schemes and with the aim of evading value added tax for a total amount of not less than ten million euro. The same (It.) Legislative Decree no. 75 /2020 also introduced an exception to the non-punishability of attempt, if the offences of fraudulent declaration by use of invoices or other documents for non-existent transactions (Art. 2, (It.) Legislative Decree no. 74/2000), fraudulent declaration by means of other artifices (Art. 3, (It.) Legislative Decree no. 74/2000) and false declaration (Art. 4, (It.) Legislative Decree no. 74/2000) are also carried out in the territory of another EU Member State in order to evade VAT for a total value of not less than EUR 10 million (Art. 6, par. 1-*bis*, (It.) Legislative Decree no. 74/2000).
Par. 2 of Art. 25-*quinquiesdecies* provides for a specific aggravating circumstance, establishing that "if, following the commission of the offences set out in paragraph 1, the entity has obtained a significant profit, the pecuniary penalty is increased by one third".

[24] The article was inserted by Art. 5, par. 1, letter d), (It.) Legislative Decree no. 14 July 2020, no. 75, in force as of 30 July 2020, concerning the implementation of Directive (EU) 2017/1371(so called PIF Directive) on "the fight against fraud affecting the financial interests of the Union by means of criminal law". The Article provides for the application to the Entity of a fine of up to two hundred shares, as well as bans (i) to contract with the public administration, except in order to obtain the performance of a public service, (ii) of the exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted and (iii) of the prohibition to advertise goods or services, in relation to the commission of the offences provided for by (It.) Presidential Decree 23 January 1973, no. 43 (Testo unico delle disposizioni legislative in materia doganale, Consolidating Act on Customs Legislation). Where the border fees due exceed one hundred thousand euro, a fine of up to four hundred quotas shall be imposed. Among the offences that come to the fore are: smuggling in the movement of goods across land borders and customs areas (Art. 282); smuggling in the movement of goods in border lakes (Art. 283); smuggling in the maritime movement of goods (Art. 284); smuggling in the movement of goods by air (Art. 285); smuggling in non-customs zones (Art. 286); smuggling by undue use of goods imported with customs facilities (Art. 287); smuggling in customs warehouses (Art. 288); smuggling in cabotage and traffic (Art. 289); smuggling in the export of goods eligible for duty drawback (Art. 290); smuggling on temporary import or export (Art. 291); smuggling of foreign tobacco products (Art. 291 *bis*); conspiracy to smuggle foreign processed tobacco (Art. 291-*quater*); other cases of smuggling (Art. 292).

[25] The (It.) Law of 9 March 2022 no. 22, containing provisions on offences against cultural heritage, introduced the liability of legal persons in this area. It. Legislative Decree no. 231/2001 is thus enriched by two additional articles: Art. 25-*septiesdecies* "Crimes against the cultural heritage" and Art. 25-*duodevicies* "Laundering of cultural property and devastation and looting of cultural and landscape heritage". **In Art. 25-*septiesdecies*** refers to the offences of theft of cultural goods (Art. 518-*bis* of the (It.) Criminal Code); misappropriation of cultural goods (Art. 518-*ter* of the (It.) Criminal Code); receiving stolen cultural goods (Art. 518-*quater* of the (It.) Criminal Code); forgery of private contracts relating to cultural goods (Art. 518-*octies* of the (It.) Criminal Code); violations concerning the alienation of cultural goods (Art. 518-*novies* of the (It.) Criminal Code); unlawful importation of cultural goods (Art. 518-*decies* of the (It.) Criminal Code); unlawful removal or export of cultural goods (Art. 518-*undecies* of the (It.) Criminal Code); destruction, dispersal, deterioration, defacement, defacement and unlawful use of cultural or landscape assets (Art. 518-*duodecies* of the (It.) Criminal Code); counterfeiting of works of art (Art. 518-*quaterdecies* of the (It.) Criminal Code). **In Art. 25-duodevicies**, on the other hand, refer to the offences of money laundering (Art. 518-*sexies* of the (It.) Criminal Code) and devastation and looting of cultural and landscape heritage (Art. 518-*terdecies* of the (It.) Criminal Code).

The categories listed above are destined to increase further, not least because of the legislative tendency to broaden the scope of the Decree, also in compliance with international and EU obligations.

1.5 Sanctioning apparatus.

They are provided for by (It.) Legislative Decree no. 231/2001 against the company as a result of the commission or attempted commission of the offences mentioned above:

- fine up to a maximum of EUR 1,549,370.69 (and precautionary attachment)[26];
- bans (also applicable as a precautionary measure for a period of not less than three months and not more than two years (with the specification that, pursuant to Art. 14, par. 1, (It.) Legislative Decree no. 231/2001, "*Bans are aimed at the specific activity to which the entity's offence relates*") which, in turn, may consist of:
- disqualification;
- suspension or revocation of authorisations, licences or concessions functional to the commission of the offence;
- ban on contracting with the public administration;
- exclusion from benefits, financing, contributions or subsidies and the possible revocation of those granted;
- ban on advertising goods or services;
- confiscation (and precautionary seizure);
- publication of the judgment (in case of application of a ban).

The pecuniary sanction is determined by the criminal court through a system based on "quotas" in a number of not less than one hundred and not more than one thousand and in an amount varying between a minimum of Euro 258.22 and a maximum of Euro 1549.37. In calculating the fine, the court shall determine:
the number of shares, taking into account the seriousness of the offence, the degree of the company's liability and the activity carried out to eliminate or mitigate the consequences of the offence and to prevent the commission of further offences;
the amount of the individual share, on the basis of the company's economic and asset conditions.

Bans apply only in relation to offences for which they are expressly provided for (in particular: offences against the Public Administration, as set out in Arts. 24 and 25 (It.) Legislative Decree 231/2001; computer crimes and unlawful data processing referred to in Art. 24-*bis* (It.) Legislative Decree no. 231/2001; certain offences against public faith, such as counterfeiting money, referred to in Art. 25-*bis* (It.) Legislative Decree no. 231/2001; offences relating to terrorism and subversion of the democratic order, referred to in Art. 25-*quater,* (It.) Legislative Decree no. 231/2001; female genital mutilation criminal offences, referred to in Art. 25-*quater* 1 (It.) Legislative Decree 231/2001; offences against the individual, referred to in Art. 25-*quinquies* (It.) Legislative Decree 231/2001; certain transnational offences, as referred to in Art. 10 (It.) Law 146/2006,); offences of culpable homicide and grievous or very grievous bodily harm, committed in breach of the rules on accident prevention and on the protection of hygiene and health at

work, referred to in Art. 25-*septies* (It.) Legislative Decree 231/2001; offences of receiving, laundering and using money, goods or benefits of unlawful origin as well as self-laundering, referred to in the new Art. 25-*octies* (It.) Legislative Decree 231/2001, organised crime offences under Art. 25-*ter* (It.) Legislative Decree 231/2001, of offences against industry and trade referred to in Art. 25-*bis.1* (It.) Legislative Decree 231/2001, of offences relating to the violation of copyright under Art. 25-*novies* (It.) Legislative Decree 231/2001, of certain environmental offences under Art. 25-*undecies* (It.) Legislative Decree 231/2001 and provided that at least one of the following conditions is met:

a) the company derived a significant profit from the commission of the offence, which was committed by persons in senior positions or persons supervised by others when, in the latter case, the commission of the offence was determined or promoted by serious organisational deficiencies;
b) in the event of repeated offences.[27]

The judge determines the type and duration of a ban, taking into account the suitability of the individual sanctions to prevent offences of the type committed and, if necessary, may apply them jointly (Art. 14, par. 1 and 3, (It.) Legislative Decree no. 231/2001).

The sanctions of disqualification from carrying on business, prohibition from contracting with the public administration and prohibition from advertising goods or services may be applied - in the most serious cases - on a definitive basis.[28] The possible continuation of the company's activity (instead of the imposition of the penalty) by a court-appointed commissioner, pursuant to and under the conditions of Art. 15 of (It.) Legislative Decree no. 231/2001, is also noted.[29]

[27] Art. 13, par. 1, letters a) and b) of (It.) Legislative Decree no. 231/2001. In this regard, see also Art. 20 (It.) Legislative Decree no. 231/2001, pursuant to which "*Repetition occurs when the entity, already definitively convicted at least once for an offence, commits another offence within five years following the final conviction.*".

[28] See, in this respect, Art. 16 (It.) Legislative Decree no. 231/2001, according to which: "*1. A definitive disqualification from exercising the activity may be ordered if the entity has derived a significant profit from the offence and has already been sentenced, at least three times in the last seven years, to temporary disqualification from exercising the activity. 2. The judge may definitively impose on the entity the sanction of a prohibition on contracting with the public administration or a prohibition on advertising goods or services when it has already been sentenced to the same sanction at least three times in the last seven years. 3. If the entity or one of its organisational units is permanently used for the sole or predominant purpose of permitting or facilitating the commission of offences for which it is held liable, the entity shall always be permanently banned from exercising its activity and the provisions of Article 17 shall not apply*".

[29] See Art. 15 of (It.) Legislative Decree no. 231/2001: "Judicial Commissioner - *If the prerequisites exist for the application of a ban that results in the interruption of the entity's activity, the judge, instead of applying the penalty, orders the continuation of the entity's activity by a commissioner for a period equal to the duration of the ban that would have been applied, when at least one of the following conditions is met (a) the entity performs a public service or a service of public necessity, the interruption of which may cause serious harm to the community; (b) the interruption of the entity's activity may cause, taking into account its size and the economic conditions of the territory in which it is located, significant repercussions on employment. In the judgment ordering the continuation of the activity, the judge indicates the duties and powers of the commissioner, taking into account the specific activity in which the offence was committed by the entity. Within the scope of the tasks and powers indicated by the judge, the commissioner shall ensure the adoption and effective implementation of organisational and control models suitable for preventing offences of the kind that have occurred. It may not perform acts of extraordinary administration without authorisation from the judge. The profit from the continuation of the activity is confiscated. The continuation of the activity by the commissioner may not be ordered when the interruption of the activity follows the definitive application of a ban*".

1.6 Attempted crimes.

In the event of the commission, in the form of an attempt[30], of the offences relevant to the administrative liability of entities, the fines (in terms of amount) and bans (in terms of time) are reduced by between one third and one half, while sanctions are not imposed in cases where the entity voluntarily prevents the action from being carried out or the event from taking place (Article 26 of (It.) Legislative Decree no. 231/2001). The exclusion of sanctions is justified, in this case, by virtue of the interruption of any relationship of identification between the entity and the persons who assume to act in its name and on its behalf.[31] This is a special case of the so-called "active withdrawal", provided for by Art. 56, par.4, (It.) Criminal Code.[32]

1.7 Changes in the entity.

(It.) Legislative Decree no. 231/2001 governs entities' financial liability also in relation to events modifying entities, such as transformation, merger, demerger and transfer of business.
According to Art. 27, par. 1 of (It.) Legislative Decree no. 231/2001, the entity is liable for the obligation to pay the pecuniary penalty with its assets or with the common fund, where the notion of assets is referred to companies and entities with legal personality, whereas the notion of "common fund" concerns unrecognised associations. This provision constitutes a form of protection in favour of the partners of partnerships and associates of associations, averting the risk that they may be called upon to answer with their personal assets for the obligations arising from the imposition of fines on the entity.[33] The provision in question also makes the legislator's intention manifest to identify an entity's liability that is independent not only of that of the perpetrator of the offence (see, in this regard, Art. 8 of (It.) Legislative Decree no. 231/2001)[34] but also with respect to individual members of the corporate structure.[35]

Art. 28-33 of (It.) Legislative Decree no. 231/2001 regulate the impact on the entity's liability of alterative events connected to transformation, merger, demerger and transfer of business operations. The legislator took into account two opposing requirements:
on the one hand, to prevent such transactions from constituting a means of easily circumventing the entity's administrative liability;
on the other hand, not to penalise reorganisation measures without evasive intentions.

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[30] According to Art. 56, par. 1 of the (It.) Criminal Code is liable for an attempted offence *: "Whoever performs suitable acts unequivocally intended to commit an offence... if the action is not performed or the event does not occur.*
[31] On this subject, see Forlenza, *Disciplina speciale per i reati contro la P.A.*, in *Guida al Diritto*, 2001, no. 26, 78.
[32] This provision "*provides for a reduction of the penalty if the offender voluntarily prevents the event of the offence. Unlike the criminal law institution, the active withdrawal of the entity does not entail a mere mitigation of the penalty, but constitutes a genuine cause of liability exclusion*", as stated by Gennai-Traversi, *op. cit.*, 157.
[33] Gennai-Traversi, *op. cit.*, 164: "*this is in derogation from the general rule according to which unlimited partners are also liable for corporate obligations (Art. 2267, 2304 and 2318 of the (It.) Civil Code), as well as members for the obligations of the association (Art. 38 of the (It.) Civil Code)".*
[34] Art. 8 of (It.) Legislative Decree no. 231/2001: "Autonomy of entity liability - *1. Entities' liability exists even when: a) the perpetrator of the offence has not been identified or is not imputable; b) the offence is extinguished for a reason other than amnesty. 2. Unless the law provides otherwise, no proceedings shall be brought against the entity when an amnesty is granted for an offence for which it is liable and the accused has waived its application. 3. The entity may waive the amnesty.*"
[35] Source: Roberti, *La responsabilità amministrativa delle persone giuridiche, delle società e delle associazioni prive di personalità giuridica e le vicende modificative*, *Nuove leggi civile commentate*, 2001, 1135.

The Explanatory Report to (It.) Legislative Decree no. 231/2001 states "*The general criterion followed in this regard was that of regulating the fate of the pecuniary penalties in accordance with the principles dictated by the Civil Code with regard to the generality of the other debts of the original entity, while maintaining, conversely, the connection of the bans with the branch of activity within the scope of which the offence was committed*".

In the case of conversion, Art. 28 of (It.) Legislative Decree no. 231/2001 provides (consistently with the nature of this institution, which implies a mere change in the type of company, without causing the extinction of the original legal entity) that the entity's liability for offences committed prior to the date on which the transformation took effect remains unaffected.

In the event of a merger, the entity resulting from the merger (including by incorporation) is liable for the offences for which the merging entities were liable (Art. 29 of (It.) Legislative Decree no. 231/2001). As a matter of fact, the merged entity assumes all the rights and obligations of the companies involved in the transaction (Art. 2504-*bis*, first paragraph of the (It.) Civil Code)[36] and, by incorporating the corporate activities, also merges those in the scope of which the offences for which the merging companies would be liable were committed.[37]

Art. 30 of (It.) Legislative Decree no. 231/2001 provides that, in the case of a partial demerger, the demerged company remains liable for offences committed prior to the date on which the demerger took effect.

The entities benefiting from the demerger (whether total or partial) are jointly and severally liable to pay the pecuniary penalties owed by the demerged entity for offences committed prior to the date on which the demerger took effect, up to the actual value of the net assets transferred to the individual entity.

This limitation does not apply to beneficiary companies to which the branch of activity in the context of which the offence was committed is transferred, even in part.[38]

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[36] Art. 2504-*bis* of the (It.) Civil Code: "Effects of the merger - *The merging or acquiring company assumes the rights and obligations of the companies that have been extinguished.*" (It.) Legislative Decree no. 6/2003 amended the text of Art. 2504-*bis*: "Effects of the merger - *The merging or acquiring company assumes the rights and obligations of the merging companies, continuing all their relations, including those of a procedural nature, prior to the merger."*

[37] The Explanatory Report to (It.) Legislative Decree no. 231/2001 clarifies that "*In order to avoid that, with particular regard to bans, the rule now enunciated determines a "dilatation" of dubious appropriateness of the punitive measure - involving "healthy" companies in measures aimed at striking "sick" companies (think of the case in which a modest company, responsible for an offence punishable by a prohibition on contracting with the public administration, is taken over by a large company with shares listed on the stock exchange) - provide, indeed, on the one hand, for the general provision limiting the bans to the activity or facilities within which the offence was committed (Article 14(1) of the scheme in question) and, on the other hand, the (...) power of the merged entity to request, in appropriate cases, the replacement of such sanctions with pecuniary sanctions.* "The Legislature alludes, in this last regard, to Art. 31, par. 2 of (It.) Legislative Decree no. 231/2001, according to which "*Without prejudice to the provisions of Article 17, the entity resulting from the merger and the entity to which, in the case of a demerger, the ban is applicable may request the judge to replace it with the pecuniary sanction, if, following the merger or demerger, the condition set out in subparagraph (b) of paragraph 1 of Article 17 is fulfilled, and the further conditions set out in subparagraphs (a) and (c) of the same Article are met.*" It is recalled that Art. 17 provides the following: "1. *Without prejudice to the application of fines, bans are not applied when, before the declaration of the opening of the first degree hearing, the following conditions are met a) the entity has fully compensated for the damage and eliminated the harmful or dangerous consequences of the offence or has in any case effectively taken steps to do so; b) the entity has eliminated the organisational deficiencies that caused the offence by adopting and implementing organisational models capable of preventing offences of the kind committed; c) the entity has made available the profit obtained for confiscation."*

[38] This provision appears partially in line with the provisions of Art. 2504-*decies*, paragraph 2, of the (It.) Civil Code, pursuant to which "*Each company shall be jointly and severally liable, to the extent of the actual value of the*

The bans relating to offences committed prior to the date on which the demerger took effect apply to the entities to which the branch of activity in which the offence was committed remained or was transferred, even in part.

Art. 31 of (It.) Legislative Decree no. 231/2001 lays down provisions common to mergers and demergers, concerning the determination of sanctions in the event that these extraordinary transactions have taken place before the conclusion of the case. It clarifies, in particular, the principle that the judge shall commensurate the fine according to the criteria laid down in Art. 11, par. 2 of (It.) Legislative Decree no. 231/2001[39], referring in any case to the economic and asset conditions of the entity originally liable, and not to those of the entity to which the penalty should be imputed following the merger or division.

In the event of a ban, the entity that will be held liable following the merger or demerger may ask the court to convert the disqualification sanction into a fine, provided that (i) the organisational fault that made it possible for the offence to be committed has been eliminated, and (ii) the entity has compensated the damage and made available (for confiscation) the part of the profit that may have been made.[40] Art. 32 of (It.) Legislative Decree no. 231/2001 allows the judge to take into account convictions already handed down against the merging entities or the demerged entity in order to configure recurrence, pursuant to Art. 20 of (It.) Legislative Decree no. 231/2001, in relation to the offences of the entity resulting from the merger or beneficiary of the demerger, relating to offences subsequently committed.[41] Uniform rules are provided for the cases of sale and transfer of a business (Art.

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net assets assigned to it or remaining with it, for the debts of the company being divided which are not covered by the company to which they relate." It. Legislative Decree no. 6/2003 transferred this provision to Art. 2506-*quater* of the (It.) Civil Code, amending it as follows: "*Each company shall be jointly and severally liable, to the extent of the actual value of the net assets assigned to it or remaining with it, for the debts of the company being divided which are not covered by the company to which they relate.*" According to Gennai-Traversi, *op. cit.*, 175: "*On the other hand, as far as total splitting is concerned, from the wording of Art. 30, par. 2, it follows - even in the absence of an express provision - that administrative liability for offences committed prior to the demerger does not refer to the demerged company, but exclusively to the companies that are the beneficiaries of the demerger, since they are the entities specified by law as being jointly and severally liable for the payment of the financial penalties owed by the demerged entity. This is, moreover, consequential to the fact that, once the full division has taken place, the original company normally ceases to exist and, in any event, remains deprived of its assets".*

[39] Art. 11 of (It.) Legislative Decree no. 231/2001: "Criteria for the commensuration of the financial penalty - *1. In the commensuration of the pecuniary sanction, the judge determines the number of quotas, taking into account the seriousness of the offence, the degree of the entity's liability and the activity carried out to eliminate or mitigate the consequences of the offence and to prevent the commission of further offences. 2. The amount of the fee is fixed on the basis of the economic and asset conditions of the entity in order to ensure the effectiveness of the sanction.*(...)".

[40] The Explanatory Report to (It.) Legislative Decree no. 231/2001 clarifies: *"The entity resulting from the merger and the entity which, in the event of a demerger, would be exposed to a ban, can obviously avoid its application by providing for the reparation of the consequences of the crime, in accordance with and within the terms generally referred to in article 17. However, it was considered appropriate to provide* (...) *that, where the operation of the aforementioned provision is precluded by the fact that the time limit for the opening of the hearing has been exceeded, the entity concerned may in any case request the judge to replace the ban with a fine amounting to one to two times the amount imposed on the entity for the same offence. Substitution is permissible on condition that, following the merger or demerger, an organisational change has taken place that is suitable to prevent the commission of new offences of the same kind and that, in addition, the entity has compensated the damage or eliminated the consequences of the offence and made available for confiscation any profit gained (i.e., for the part attributable to the entity itself). This is without prejudice, in any event, to the right to request conversion also in executivis pursuant to Article 78."*

[41] Art. 32 (It.) Legislative Decree no. 231/2001: "Relevance of the merger or division for the purposes of recurrence - *1. In cases of liability of the entity resulting from the merger or benefiting from the division for offences committed after the date on which the merger or division took effect, the judge may consider recurrence, in accordance with Article 20, also in relation to convictions pronounced against the merging entities or the divided entity for offences committed before that date. 2. To this end, the court shall take into account the nature of the infringements and the activity in the context*

33 of (It.) Legislative Decree no. 231/2001)[42], modelled on the general provision of Art. 2560 of (It.) Civil code[43]; the transferee, in the event of the transfer of a business in whose activity the offence was committed, is jointly and severally liable to pay the fine imposed on the transferor, subject to the following limitations:

(i) the benefit of the transferor's prior enforcement is not affected;
(ii) the transferee's liability is limited to the value of the business transferred and the fines resulting from the statutory books of account or due for administrative offences of which it had knowledge.

On the contrary, the extension to the transferee of the bans imposed on the transferor remains excluded.

1.8 Offences committed abroad.

According to Art. 4 of (It.) Legislative Decree no. 231/2001, the entity may be held liable in Italy in relation to offences - relevant for the purposes of the administrative liability of entities - committed abroad.[44] The Explanatory Report to (It.) Legislative Decree no. 231/2001 emphasises the need not to leave a frequently occurring criminal situation unsanctioned, also in order to avoid easy circumvention of the entire regulatory framework in question.

The prerequisites (provided for in the regulation or inferable from the whole of (It.) Legislative Decree no. 231/2001) on which the liability of the entity for offences committed abroad is based are:

(i) the offence shall be committed abroad by a person functionally linked to the entity, pursuant to Art. 5, par. 1 of (It.) Legislative Decree no. 231/2001;
(ii) the entity shall have its head office in the territory of the Italian State;
(iii) an entity may be liable only in the cases and under the conditions laid down in Art. 7, 8, 9, 10 of the (It.) Criminal Code (in cases where the law provides that the offender - a natural person - is punished at the request of the Minister of Justice,

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of which they were committed as well as the characteristics of the merger or division. 3. With regard to the entities benefiting from the division, recurrence may be deemed, pursuant to paragraphs 1 and 2, only if the branch of activity within the scope of which the offence for which the split entity was convicted was transferred to them, even in part". The Explanatory Report to (It.) Legislative Decree no. 231/2001 clarifies that "*Repetition, in such a case, does not operate automatically, but is subject to discretionary assessment by the judge, in relation to the concrete circumstances. In respect of the entities benefiting from the demerger, it may also be recognised only when the entity to which the branch of activity in the context of which the previous offence was committed has been transferred, even in part".*

[42] Art. 33 of (It.) Legislative Decree no. 231/2001: " Transfer of business. - *1. In the event of the transfer of the business in the course of which the offence was committed, the transferee is jointly and severally liable, subject to the benefit of prior exoneration of the transferring entity and within the limits of the value of the business, to pay the pecuniary penalty. 2. The transferee's obligation is limited to monetary penalties resulting from the mandatory books of account, or due for administrative offences of which it had knowledge. 3. The provisions of this Article shall also apply to business transfer*". On this point, the Explanatory Report to (It.) Legislative Decree no. 231/2001 clarifies: "*It is understood that such operations are also susceptible to avoidance of liability:* and, nevertheless, the opposing requirements of protection of the custody and security of the legal traffic are more meaningful compared to them, since in the presence of succession assumptions in a particular capacity that leave the identity (and responsibility) of the transferee or transferor unaltered".

[43] Art. 2560 of the (It.) Civil Code: "Debts relating to the transferred business - *The transferor is not discharged from its debts relating to the operation of the transferred business prior to the transfer unless the creditors have consented thereto. In the transfer of a commercial business, the purchaser of the business is also liable for the aforementioned debts, if they appear in the statutory books of account.*

[44] Art. 4 of (It.) Legislative Decree 231/2001 provides for the following: "*1. In the cases and under the conditions laid down in Articles 7, 8, 9 and 10 of the (It.) Criminal Code, entities having their head office in the territory of the State shall also be liable in respect of offences committed abroad, provided that the State of the place where the offence was committed does not prosecute them. 2. In cases where the law provides that the offender is punished at the request of the Minister of Justice, proceedings are brought against the entity only if the request is also made against the latter.*"

proceedings are brought against an entity only if the request is also made against the entity itself).[45]

and, also in accordance with the principle of legality under Art. 2 of (It.) Legislative Decree no. 231/2001 only for the series of offences for which its liability is provided for by an *ad hoc* legislative provision;

(iv) if the cases and conditions provided for in the aforementioned articles of the Criminal Code exist, the State of the place where the act was committed shall not prosecute the entity.

1.9 Infringement proceedings.

Liability for administrative offences resulting from a criminal offence is established in criminal proceedings. In this regard, Art. 36 of (It.) Legislative Decree no. 231/2001 provides that *"The jurisdiction to hear administrative offences committed by the entity belongs to the criminal court having jurisdiction for the offences on which the offences depend. The provisions on the composition of the court and the related procedural provisions relating to the offences on which the administrative offence depends shall be observed in the proceedings for the determination of the administrative offence of the entity".*

Another rule, inspired by reasons of effectiveness, homogeneity and procedural economy[46], is that of the mandatory joinder of proceedings: the trial against the entity shall remain joined, as far as possible, to the criminal trial instituted against the natural person who committed the offence underlying the entity's liability (Art. 38 of (It.) Legislative Decree no. 231/2001). This rule is balanced by the dictate of Art. 38, par. 2 of (It.) Legislative Decree no. 231/2001, which, on the other hand, regulates cases in which the administrative offence is prosecuted separately.[47] The entity participates in the

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[45] Art. 7 of the (It.) Criminal Code: "Offences committed abroad - *Any citizen or foreigner who commits any of the following offences on foreign soil shall be punished under Italian law1) offences against the personality of the Italian State; 2) offences of counterfeiting the seal of the State and the use of such a counterfeit seal; 3) offences of counterfeiting money that is legal tender in the territory of the State, or in revenue stamps or in Italian public credit cards; 4) offences committed by public officials in the service of the State, abusing their powers or violating the duties inherent in their functions; 5) any other offence for which special legal provisions or international conventions establish the applicability of Italian criminal law*". Art. 8 of the (It.) Criminal Code: "Political offence committed abroad - A *citizen or foreigner who commits on foreign soil a political offence not included among those indicated in number 1 of the preceding article shall be punished according to Italian law, at the request of the Minister of Justice. In the case of an offence punishable on complaint by the offended person, a complaint is required in addition to the complaint. For the purposes of criminal law, a political offence is any offence, which offends a political interest of the State or a political right of the citizen. A common offence determined, in whole or in part, by political motives shall also be considered a political offence.*" Art. 9 of the (It.) Criminal Code: "Common crime of the citizen abroad - *The citizen, who, outside the cases indicated in the two preceding articles, commits in foreign territory a crime for which Italian law establishes life imprisonment, or imprisonment of not less than a minimum of three years, shall be punished according to the same law, provided he is in the territory of the State. If it is a crime for which a punishment restricting personal liberty of a lesser duration is prescribed, the offender shall be punished at the request of the Minister of Justice or at the request or on complaint of the offended person. In the cases provided for in the preceding provisions, if the offence is committed against the European Communities, a foreign State or a foreigner, the offender shall be punished at the request of the Minister of Justice, provided that his extradition has not been granted, or has not been accepted by the Government of the State where he committed the offence.*" Art. 10 of the (It.) Criminal Code: "Common offence of the foreigner abroad - *A foreigner who, outside the cases indicated in Articles 7 and 8, commits in foreign territory, to the detriment of the State or of a citizen, an offence for which Italian law prescribes life imprisonment, or imprisonment of not less than one year, shall be punished in accordance with that law, provided that he is in the territory of the State, and there is a request from the Minister of Justice, or an application or a complaint by the offended person. If the offence is committed to the detriment of the European Communities by a foreign State or a foreigner, the offender shall be punished according to Italian law, at the request of the Minister of Justice, provided that: 1) The offender is in the territory of the State; 2) it is a crime for which the penalty is life imprisonment or imprisonment of not less than a minimum of three years; 3) their extradition has not been granted or has not been accepted by the Government of the State where the offender committed the crime or by the Government of the State to which they belong.*"

[46] This is how, verbatim, the explanatory report to Legislative Decree no. 231/2001 reads.

[47] Art. 38, par. 2, (It.) Legislative Decree no. 231/2001: "*Separate proceedings are brought for the administrative offence committed by the entity only when: a) the suspension of proceedings has been ordered pursuant to Article 71 of the (It.)*

criminal proceedings with its legal representative, unless the latter is charged with the offence on which the administrative offence depends[48]; when the legal representative does not appear, the incorporated entity is represented by its defence counsel (Art. 39, par. 1 and 4 of (It.) Legislative Decree no. 231/2001).[49]

1.10 Organisation, management and control models.

Fundamental aspect of (It.) Legislative Decree no. 231/2001 is the attribution of an exempting value to the organisation, management and control models of the company. As a matter of fact, in the case of an offence committed by a person in a top position, the company shall not be liable if it proves that (Art. 6, par. 1 of (It.) Legislative Decree no. 231/2001):

a) the management entity has adopted and effectively implemented, prior to committing the offence, organisational and management models capable of preventing offences of the kind committed;
b) the task of supervising the operation of and compliance with the models as well as ensuring that they are updated has been entrusted to an entity of the company having initiative and control autonomous powers;
c) the persons committed the offence by fraudulently circumventing the organisation and management models;
d) there was no omitted or insufficient supervision by the supervisory entity.

The company shall therefore prove its extraneousness to the facts ascribed to the senior executive by proving the existence of the above-mentioned concurrent requirements and, consequently, the circumstance that the commission of the offence did not derive from its own "organisational fault".[50]

In the case, on the other hand, of an offence committed by persons subject to the management or supervision of others, the company is liable if the commission of the

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Code of Criminal Procedure [suspension of proceedings due to the incapacity of the defendant, ed.]*; b) the proceedings have been finalised with the abbreviated judgement or with the application of the penalty pursuant to Article 444 of the (It.) Code of Criminal Procedure* [application of the penalty on request, ed.], *or the criminal conviction has been issued; c) compliance with the procedural provisions requires it."* For the sake of completeness, reference is also made to Art. 37 of (It.) Legislative Decree no. 231/2001, pursuant to which *"The administrative offence committed by the entity shall not be prosecuted when criminal proceedings cannot be commenced or continued against the perpetrator of the offence for lack of a condition of prosecution*" (i.e. those provided for in Title III of Book V of the (It.) Code of Criminal Procedure: complaint, application for proceedings, request for proceedings or authorisation to proceed, referred to, respectively, in Art. 336, 341, 342, 343 of the (It.) Code of Criminal Procedure).

48 "*The rationale of the provision that excludes the possibility of the representative of the entity being the same person as the person charged with the offence appears evident: given that the first person is responsible for ensuring the entity's defensive prerogatives in the proceedings relating to the offence, the potential conflict between the interests of the two figures could make the lines of defence irreconcilable. If this is the case, it does not appear doubtful that the same prohibition should also apply when the legal representative of the entity is charged with a crime connected or related to the one on which the administrative offence depends*", as stated by M. Ceresa-Gastaldo in *Il processo alle società nel d.lgs. 8 giugno 2001, n. 231*, Torino, 24.

49 "Where the entity's legal representative is also charged with the offence on which the administrative offence depends, the entity's participation in the criminal proceedings shall necessarily occur through the appointment of a different legal representative for the trial" (Garuti, in AA.VV., *Responsabilità degli enti*, *cit.*, 282 f.).

50 In this respect, the Explanatory Report to (It.) Legislative Decree no. 231/2001 reads as follows: "*For the purposes of the entity's liability, therefore, it will be necessary not only that the offence be objectively attributable to it (the conditions under which this occurs, as we have seen, are governed by Article 5); moreover, the offence shall also be an expression of company policy or at least derive from organisational fault*". And again: *"one starts from the presumption (empirically well-founded) that, in the case of an offence committed by top management, the "subjective" requirement for the entity's liability [i.e. the so-called* "organisational fault" *of the entity] is fulfilled, since the top management expresses and represents the entity's policy; where this does not occur, it will be up to the company to prove its extraneousness, and this it can only do by proving the existence of a series of competing requirements."*

offence was made possible by the violation of the management or supervisory obligations with which the company is required to comply.[51]

In any case, the violation of management or supervisory obligations is excluded if the company, prior to the commission of the offence, has adopted and effectively implemented an organisation, management and control model capable of preventing offences of the kind committed.

Art. 7, par. 4 of (It.) Legislative Decree no. 231/2001 also defines the requirements for the effective implementation of organisational models:
periodic verification and possible amendment of the model when significant violations of the requirements are discovered or when changes occur in the organisation and activity;
a disciplinary system suitable for penalising non-compliance with the measures indicated in the model.

It will be the judicial authority that will have to, in the hypothesis provided for in the aforementioned Art. 7, prove the failure to adopt and effectively implement an organisation, management and control model suitable for preventing offences of the kind that have occurred.

It. Legislative Decree no. 231/2001 outlines the content of organisation and management models, stipulating that, [52]in relation to the extent of delegated powers and the risk of offences being committed, they shall:
identify the activities within the scope of which offences may be committed;
provide for specific protocols aimed at planning the formation and implementation of the company's decisions in relation to the offences to be prevented;
identify ways of managing financial resources that are suitable for preventing the commission of offences;
provide for information obligations towards the entity in charge of supervising the functioning of and compliance with the models;
introduce an appropriate disciplinary system to sanction non-compliance with the measures indicated in the model.

It. Law of 30 November 2017, no. 179 (entered into force on 29 December 2017) on "whistle-blowing", introduced the new paragraph 2-*bis* of Art. 6 of (It.) Legislative Decree no. 231/2001, pursuant to which the organisational models adopted shall provide for the activation of one or more channels enabling the submission, in order to protect the integrity of the entity itself, of circumstantiated reports of unlawful conduct, relevant with respect to the offences contemplated therein and based on precise and concordant factual elements, or of violations of the organisational and management model, of which they have become aware by reason of their functions. These channels shall guarantee the confidentiality of the whistle-blower's identity in the handling of the report, and at least one shall be suitable for ensuring confidentiality by computerised means.

1.11 Codes of conduct drawn up by the associations representing the entities.

Art. 6, par. 3 of (It.) Legislative Decree no. 231/2001 provides that "*Organisational and management models may be adopted, guaranteeing the requirements set out in paragraph 2, on the basis of codes of conduct drawn up by the associations representing the entities, communicated to the Ministry of Justice which, in agreement with the competent Ministries, may, within thirty days, formulate observations on the suitability of the models to prevent offences*".

[51] Art. 7, par. 1 of (It.) Legislative Decree no. 231/2001: "Persons subject to the direction of others and organisational models of the entity - *In the case provided for in Article 5, par. 1, letter b), the entity is liable if the commission of the offence was made possible by failure to comply with the obligations of direction or supervision*".
[52] See Art. 6, par. 2 of (It.) Legislative Decree no. 231/2001.

Confindustria has defined the Guidelines for the construction of organisation, management and control models (hereinafter, "Confindustria Guidelines"), updated in June 2021, which contain methodological indications for the identification of risk areas (sectors/activities in which offences may be committed), for the design of a control system (the so-called protocols for planning the formation and implementation of the entity's decisions) and which set out the indispensable contents of the organisation, management and control model.

In particular, the Confindustria Guidelines identify the following stages for defining the model:

- identification of risks and protocols;
- setting up preventive control systems;
- adoption of general instruments such as a code of conduct and a disciplinary system that take into account the offences referred to in the decree;
- identification of the criteria for the selection of the supervisory entity, its requirements, tasks and powers, and reporting obligations.

The O.R.I. Martin S.p.A. adopts its own organisation, management and control model on the basis of the Confindustria Guidelines, adapting them, of course, to its own needs and peculiarities, considering the adoption of the model an opportunity for growth and improvement in the company's governance system, not only in the logic of crime prevention.

1.12 Syndicate of suitability.

The ascertainment of the company's liability, attributed to the criminal court, takes place through: the verification of the existence of the predicate offence for the company's liability; and the review of the suitability of the organisational models adopted.

The judge's review of the abstract suitability of the organisational model to prevent the offences referred to in (It.) Legislative Decree no. 231/2001 is conducted according to the criterion of the so-called "posthumous prognosis".

The judgement of suitability shall be formulated according to an essentially *ex ante* criterion whereby the judge places himself, ideally, in the company reality at the time when the offence occurred in order to test the congruity of the model adopted.

In other words, the organisational model that, prior to the commission of the offence, could and should be deemed "fit to prevent offences" should be deemed to eliminate or, at least, minimise, with reasonable certainty, the risk of the offence subsequently being committed.

CHAPTER 2

DESCRIPTION OF THE COMPANY REALITY: ELEMENTS OF THE *GOVERNANCE MODEL* AND THE GENERAL ORGANISATIONAL STRUCTURE OF O.R.I. MARTIN S.p.A.

2.1 O.R.I. MARTIN S.p.A.

O.R.I. Martin Acciaieria e Ferriera di Brescia S.p.A., abbreviated as O.R.I. Martin S.p.A., has as its corporate purpose the production and trade of steel, metallurgical and mechanical products in general, including foundry and processing of cast iron and metal products of any kind and species.

The company may assume and grant guarantees, commissions, representations, with or without deposits and mandates, acquire, use and transfer patents, know-how and other works of human genius, perform market research and data processing on its own behalf and on behalf of third parties, grant and obtain licences for commercial exploitation, and perform all commercial (including import-export) and financial transactions. The company may also carry out movable, real estate and industrial transactions that are necessary or useful for the achievement of the corporate purposes, as well as provide sureties, endorsements and guarantees, including collateral, for its own obligations and those of affiliated companies, or subsidiaries of the same parent company and in any case within the same group, and in any case not vis-à-vis the public.

The company may also acquire interests and shareholdings in other companies or enterprises of any kind having a similar, related or connected purpose to its own, or having an instrumental function in achieving the corporate purpose.

Lastly, the company may provide office services, with the supply of all orders and necessary utilities, for the benefit of group companies and third parties in general.

In any case, there are activities excluded from the corporate purpose, such as the activities reserved for financial intermediaries under Art. 106 of (It.) Legislative Decree 1 September 1993 no. 385, those reserved for securities brokerage companies under (It.) Legislative Decree no. 24 February 1998 no. 58 and those of mediation under (It.) Law of 3 February 1989 no. 39, the protected professional activities referred to in (It.) Law 23 November 1939 no. 1815 and their amendments, additions and replacements, and in any case all activities that by law are reserved for persons with special requirements not possessed by the company.

2.2 Governance Model of O.R.I. Martin S.p.A.

ORI Martin S.p.A. is a joint-stock company and is administered by a Board of Directors consisting of three to a maximum of eleven members, including non-members, as resolved by the Shareholders“ Meeting.

The Directors remain in office for the term established at their appointment and in any case not more than three financial years and may be re-elected. Their term of office

expires on the date of the shareholders" meeting called to approve the financial statements for the last financial year of their office.

The management of the company is the exclusive responsibility of the Board of Directors, which is vested with the broadest powers with the authority to perform all acts deemed appropriate for the implementation and achievement of the corporate purposes, with the exception of resolutions that by law or by the Articles of Association are strictly reserved to the Shareholders" Meeting.

Resolutions concerning mergers in the cases provided for in Articles 2505 and 2505-*bis* of the (It.) Civil Code, the establishment or closure of secondary offices, the reduction of capital in the event of shareholder withdrawal, adaptations of the Articles of Association to regulatory provisions, and the transfer of the registered office to another municipality within the national territory fall within the competence of the Board of Directors. Article 2436 of the (It.) Civil Code applies in any case.

If the Shareholders" Meeting has not done so, the Board of Directors elects a Chairman from among its members and may appoint a Vice-Chairman, who shall perform the functions of the Chairman in the event of the latter's absence or impediment.

The Chairman of the Board of Directors convenes the Board of Directors, sets the agenda, coordinates its work and ensures that adequate information on the items on the agenda is provided to all directors.
If necessary, the Board of Directors appoints a secretary, who may also be an outsider.

The Board of Directors has appointed a Managing Director from among its members, fixing the relevant powers and remuneration in accordance with the law.

The Board of Directors may appoint amicable arbitrators, directors as well as *ad negotia* attorneys and proxies in general for certain acts or categories of acts, for all of them determining both the powers and the relative fees and/or interests.

The Chairman of the Board of Directors, the Vice-Chairman and the executive directors, always severally, with sole signing authority for the execution of the Board's resolutions and/or within the scope of their respective delegated powers, shall represent the Company vis-à-vis third parties and in court, with the power to bring judicial and administrative actions and petitions for all levels of jurisdiction and also for revocation and cassation proceedings and to appoint lawyers and attorneys in litigation for this purpose.

2.3 Organisational structure of O.R.I. Martin S.p.A.

The organisational structure of O.R.I. Martin S.p.A. has seven departments and four areas that report hierarchically to the Managing Director.

The Managing Director is therefore responsible for:

- Purchasing Department
- Administration
- Financial Management

- Technical Plant Management
- Research and Development Directorate
- Sales Management
- Human Resources Management
- Management Control Area
- Energy Area
- Urban planning/construction area
- Information systems area
- Sustainability Area

2.4 The quality management system. Environment and safety.

As part of the improvement of its processes, the company has implemented a Quality, Environment and Health and Safety Management System.

The Company has also subjected its Management Systems to certification by recognised third-party bodies, which were found to comply with the requirements of the applicable international standards, namely:

- UNI EN ISO 9001:2015 for Quality
- IATF 16949:2016 for Quality
- UNI EN ISO14001:2015 for the Environment
- UNI EN ISO 45001:2018 for Health and Safety
- UNI EN ISO 50001:2018 for Energy

It should be emphasised that the tools and resources of the Quality, Environment and Health and Safety Management System are functional not only for the pursuit of the purposes for which they are intended, but also for the prevention of the offences referred to in (It.) Legislative Decree no. 231/2001 insofar as they are, by their very nature, likely to hinder both culpable and intentional conduct characterising the commission of offences entailing the company's administrative liability.

The particular value of the above-mentioned safeguards for the prevention of the offences referred to in (It.) Legislative Decree no. 231/2001 will, where necessary, be specifically highlighted, with reference to each type of offence relevant for this purpose, in the Special Sections of the Organisation, Management and Control Model.

CHAPTER 3

ORGANISATION, MANAGEMENT AND CONTROL MODEL OF O.R.I. MARTIN S.p.A. AND METHODOLOGY FOLLOWED IN ITS PREPARATION

3.1 Foreword

The adoption of an Organisational, Management and Control Model pursuant to (It.) Legislative Decree no. 231/2001 (hereinafter also referred to as the "Model") and its effective and constant implementation, in addition to representing grounds for exemption from the Company's liability with regard to the commission of certain types of offences, is an act of social responsibility of O.R.I. Martin S.p.A. from which benefits accrue to all stakeholders: from shareholders, to users, employees, creditors and all others whose interests are linked to the fortunes of the Company.

The introduction of a control system for entrepreneurial action, together with the establishment and dissemination of ethical principles, improving the already high standards of conduct adopted by the Company, increase the trust and reputation of O.R.I. Martin S.p.A. enjoys vis-à-vis third parties and, above all, they fulfil a regulatory function in that they regulate the conduct and decisions of those who are called upon to work for the Company on a daily basis in accordance with the aforementioned ethical principles.

The O.R.I. Martin S.p.A. has, therefore, intended to initiate a series of activities aimed at making its Organisational Model compliant with the requirements of (It.) Legislative Decree no. 231/2001 and consistent with the principles already embedded in its corporate governance culture.

3.2 The Project of O.R.I. Martin S.p.A. for the definition of its Organisational, Management and Control Model pursuant to (It.) Legislative Decree no. 231/2001

The methodology chosen to execute the Project, in terms of organisation, definition of operational methods, structuring into phases and allocation of responsibilities between the various company functions, was defined in order to guarantee the quality and authority of the results.

The Project is divided into the five phases summarised in the table below

Phases	***Activities***
Phase 1	**Identification of processes and key officers**
Phase 2	**Identification of risk areas**
Phase 3	**Survey of the "As- Is" situation and Evaluation of the control model in place**
Stage 4	**Gap Analysis ed Action Plan**
Phase 5	**Definition of the Organisation, Management and Control Model**

The methodologies followed and criteria adopted in the various phases of the Project are outlined below.

3.2.1 Identification of processes and key officers, identification of risk areas (STEPS 1 and 2).

Art. 6, par. 2, letter a) of (It.) Legislative Decree no. 231/2001 indicates, among the requirements of the Model, the identification of the processes and activities within the scope of which the offences expressly referred to in the decree may be committed. In other words, these are those company activities and processes that are commonly referred to as "sensitive" (hereinafter referred to as "sensitive activities" and "sensitive processes").
The purpose of Phases 1 and 2 was the identification of the company areas targeted and the preliminary identification of sensitive processes and activities.

With reference to the predicate offences of administrative liability under (It.) Legislative Decree no. 231/01, it has been assessed that the risk relating to the offence of printing counterfeit coins or stamps is only abstractly and not concretely conceivable. In particular, the risk relating to counterfeit currency offences is only abstractly conceivable as no activity is detected of O.R.I. Martin S.p.A. in the production or marketing of such values.
Similarly, it was assessed that the risk relating to the offences of "*market abuse*", racism and xenophobia and the offences of fraud in sporting competitions and abusive gaming or betting activities are only abstractly and not concretely conceivable, since no activity is detected of O.R.I. Martin S.p.A. with reference to the management of inside information

and transactions in financial instruments, nor have any possible sensitive areas been identified that are subject to the risk of occurrence of the new offences under Article 25-*terdecies* and Article 25_*quaterdecies*.

Preparatory to the identification of sensitive activities was the in-depth analysis of the corporate and organisational structure of O.R.I. Martin S.p.A., carried out in order to better understand the business areas under analysis.

The analysis of the organisation, the operating model and the proxies/powers conferred by the Company allowed for an initial identification of sensitive processes/activities and a preliminary identification of the functions responsible for these processes/activities.

A further activity was the identification of the persons responsible for the sensitive processes/activities, i.e. the resources with in-depth knowledge of the sensitive processes/activities and their control mechanisms, as well as the other functions and persons involved.

This essential information was gathered both through the analysis of company documentation and through interviews with key persons, identified as those at the highest organisational level able to provide detailed information on individual company processes and the activities of individual functions.

A preliminary mapping exercise was carried out to highlight sensitive activities and stakeholders.

3.2.2 Survey of the "As- Is" situation and Evaluation of the existing control model, Gap Analysis and Action Plan (Phase 3 and 4)

The following principles were taken into account in the survey of the existing control system:

- existence of formalised procedures;
- traceability and ex-post verifiability of transactions by means of appropriate documentary/informative supports;
- segregation of duties;
- existence of formalised powers consistent with the assigned organisational responsibilities.

In order to identify and analyse in detail the existing control model to guard against the risks identified and highlighted in the analysis of sensitive activities described above, and to assess the conformity of the Model with the provisions of the Decree, a comparative analysis was carried out between the existing organisational and control model and a theoretical reference model, based on the content of the Decree's provisions.

Through this comparison, it was possible to deduce the areas for improvement of the existing internal control system and, on the basis of what emerged, an implementation plan was prepared to identify the organisational requirements characterising an organisational, management and control model that complies with the provisions of the decree and the related actions for improving the internal control system.

The following documents were prepared as a result of the activities carried out:

- a final mapping of sensitive activities indicating the organisational structures responsible;
- a document analysing the sensitive processes and the control system, highlighting:
  - the elementary processes/activities performed;
  - the functions as well as the internal and external individuals involved;
  - the relevant roles/responsibilities;
  - the main Public Administration's bodies involved;
  - the existing inspection system.

With a view to the continuous strengthening of the existing control systems, supplementary actions were also taken to the adopted procedural systems.

Of particular note is the adoption of the Code of Ethics, which is an essential reference element of this Model.
It is also understood that failure to comply with the general principles set out in the Code of Ethics constitutes a violation of the precepts of (It.) Legislative Decree no. 231/01 exclusively insofar as it is prodromal to the commission of the predicate offences indicated in the special section of the Model.

3.2.3 Design of the Organisation, Management and Control Model (Step 5)

The purpose of Phase 5 was to define the Organisation, Management and Control Model of O.R.I. Martin S.p.A., pursuant to (It.) Legislative Decree no. 231/2001, articulated in all its components.

The realisation of Phase 5 was supported both by the results of the previous phases and by the policy choices of the Company's decision-making bodies.

O.R.I. Martin S.p.A. intended to prepare a Model that would take into account its own peculiar corporate reality, consistent with its own system of governance and capable of enhancing the existing checks and bodies.

The Model, therefore, represents a coherent set of principles, rules and provisions:

- affect the internal functioning of the Company and the way in which it relates to the outside world;
- regulate the diligent management of a control system for sensitive activities, aimed at preventing the commission, or attempted commission, of the offences referred to in (It.) Legislative Decree no. 231/2001;

The Model constitutes an organic system of rules and checks aimed at:

- ensuring conditions of transparency and fairness in the conduct of company business to protect its own and its subsidiaries" reputation and image, the interests of shareholders and the work of its employees;
- preventing offences that could be committed by both senior executives and their subordinates, and give rise to exoneration from liability of the entity in the event of the commission of one of the offences identified in (It.) Legislative Decree no. 231/01.

This document consists of a "General Section", which contains the main principles of the Model, and of individual "Special Sections", prepared, on the basis of the business activities and Sensitive Processes detected and the relevant improvement measures, for the different categories of offence covered by (It.) Legislative Decree No. 231/2001.

Special Section 1, entitled "*Offences committed in the course of relations with the Public Administration*", applies to the specific types of offences provided for in Articles 24, 25 and 25a of (It.) Legislative Decree no. 231/2001; Special Section 2, entitled "*Corporate C*rimes", applies to the types of offences envisaged for corporate offences (such as, among others, false corporate communications, obstruction of the exercise of supervisory functions, market rigging) referred to in Articles 25-*ter* and 25-*sexies*; Special Section 3, entitled "*Crimes for the Purposes of Terrorism and Subversion of the Democratic Order"* relates to the types of offences referred to in Art. 25-*quater*; Special Section 4 entitled "Crimes against the individual" concerning the crimes referred to in Art. 25-*quinquies of* (It.) Legislative Decree no. 231/2001, Special Section 5, entitled "*Transnational Crimes*", concerning the crimes referred to in Art. 10 of (It.) Law 16 March 2006, no. 146, of "Ratification and Execution of the United Nations Convention and Protocols against Transnational Organised Crime, adopted by the General Assembly on 15 November 2000 and 31 May 2001; Special Section 6, entitled "*Crimes related to health and safety at work",* referred to in Art. 25-*septies of* (It.) Legislative Decree no. 231/2001; Special Section 7 entitled "*Offences of receiving, laundering and using money, goods or benefits of unlawful origin as well as self-laundering and offences relating to non-cash payment instrumentsi*" referred to in art. 25-octies *and 25-octies.1* of (It.) Legislative Decree no. 231/2001; .Special Section 8 entitled "*Organised crime off*ences"; Special Section 9 entitled "*Crimes against industry and trade";* Special Section 10 entitled "*Inducement not to make statements or to make false statements to the judicial authorities"* ; Special Section 11 entitled "*Employment of citizens of third countries whose stay is irregular*"; Special Section 12 entitled "*Environmental crimes*"; Special Section 13 entitled "*Bribery among private individuals*" and Special Section 14 entitled "*Tax crimes and smuggling"*.231/2001; Special Section 7 entitled "*Offences of receiving, laundering and using money, goods or benefits of unlawful origin as well as self-laundering and offences relating to non-cash payment instrumentsi*" referred to in art.

CHAPTER 4

THE SUPERVISORY ENTITY PURSUANT TO (IT.) Legislative Decree NO. 231/01

4.1 The Supervisory Entity

According to the provisions of (It.) Legislative Decree no. 231/01, the entity may be exonerated from liability resulting from the commission of offences by senior executives or persons supervised by them, if the management entity has

- adopted and effectively implemented organisation, management and control models suitable for preventing the offences in question;
- entrusted the task of supervising the operation of and compliance with the model and ensuring that it is kept up-to-date to a body of the entity endowed with autonomous initiative and control powers.

Entrusting the aforesaid tasks to a body endowed with autonomous initiative and control powers, together with the proper and effective performance thereof, is therefore an indispensable prerequisite for exemption from liability under (It.) Legislative Decree No. 231/2001.

The Confindustria Guidelines identify autonomy and independence, professionalism and continuity of action as the main requirements of the Supervisory Board.

In particular, according to Confindustria, the requirements of autonomy and independence require:

√ the provision of a "*reporting*" of the Supervisory Board to the highest operational corporate management;
√ the absence, for the Supervisory Board, of operational tasks that would jeopardise its objectivity;
√ where employees are concerned, the inclusion of the Supervisory Board "*as a staff unit in as high a hierarchical position as possible*".

The connotation of professionalism shall refer to the "*baggage of tools and techniques*" necessary to effectively perform the activity of the Supervisory Board; the continuity of action, which guarantees an effective and constant implementation of the organisational

model, is fostered by the presence of a structure exclusively and full-time dedicated to supervisory activities.
Moreover, the Confindustria Guidelines provide that "*in the case of mixed composition or with internal members of the Body, since total independence from the entity cannot be demanded of the internal members, the degree of independence of the Body shall be assessed as a whole*".

4.2 General principles on the establishment, appointment and replacement of the Supervisory Board.

It. Legislative Decree no. 231/01 does not provide indications as to the composition of the Supervisory Board (SB). In the absence of such indications, the Board of Directors opted for a solution that, taking into account the purposes pursued by the rule, is able to ensure the performance of the activities for which the supervisory body is responsible.

The Supervisory Board of O.R.I. Martin S.p.A. is established by resolution of the Board of Directors.

The SB was identified as a multi-subjective body of up to four members. In any case, the SB is validly constituted when at least two of its members are in office.

This configuration guarantees the autonomy of the control initiative from any form of interference and/or conditioning by any component of the organisation itself, thanks also to direct reporting to the Board of Directors and the Board of Auditors.

The Supervisory Board remains in office until the expiry of the term of office of the Board of Directors that appointed it, and its members may be re-elected, without prejudice to the possibility of early revocation for serious and ascertained non-compliance or conflict of interest, or forfeiture of office, ascertained by the Board of Directors due to loss of the requisites of honourableness indicated below.

It is necessary that the members of the Supervisory Board possess, in addition to adequate professional skills, subjective requirements that guarantee the autonomy, independence and honourableness required by the task.

In particular, they may not be appointed:

- those who are in one of the grounds for ineligibility or disqualification provided for in Art. 2382 for directors and by Art. 2399 for auditors of the (It.) Civil Code;
- those who are temporarily and/or permanently banned from public office;
- those who are subject to insolvency proceedings;
- those who are indicted for one of the offences referred to in Articles 25 et seq. of (It.) Legislative Decree no. 231/2001;
- the spouse, relatives and kin up to the fourth degree of kin of the directors of the company, the directors, spouse, relatives and kin up to the fourth degree of kin of the directors of the companies controlled and/or controlling, participated in and/or participating in the company;

- those who have had a public employment relationship with central or local administrations in the three years preceding their appointment as members of the Supervisory Board;
- those who are linked to the company or its subsidiaries and/or investees, controlling and/or participating companies by an employment relationship or a consultancy or paid work relationship, or by relationships of a financial nature that compromise their independence;
- those who have been subjected to preventive measures ordered by the judicial authorities pursuant to (It.) Law dated 27 December 1956 no. 1423 or (It.) Law dated 31 May 1965, no. 575 and subsequent amendments and additions;
- those who have been convicted, even if not final, or have had a penalty applied at their request (so-called "plea bargaining"), in Italy or abroad, for violations relevant to the administrative liability of entities pursuant to (It.) Legislative Decree no. 231 of 2001;
- those who have been convicted, even if not final, or have received a "plea bargaining" sentence to a penalty that entails disqualification, even temporary, from public office, or temporary disqualification from the executive offices of legal persons and companies.

Should the Supervisory Board cease to exist, the Board of Directors shall replace it by means of its own resolution and at the same time provide for the relevant updating of the Model.

In order to ensure the necessary stability for the Supervisory Board, the procedures for the revocation of the powers connected with such appointment are set out below.

The revocation of the Supervisory Board may only take place for just cause (also related to organisational restructuring of the Company) by means of a specific resolution of the Board of Directors, after hearing the opinion of the Board of Statutory Auditors.

In this regard, "just cause" for revocation may be understood to mean, by way of example only:

– serious negligence in the performance of the duties connected with the office, such as (by way of example only): failure to draw up the half-yearly information report or the annual summary report on the activities carried out to the Board of Directors and the Board of Statutory Auditors referred to in paragraph 4.6 below; failure to draw up the supervisory programme referred to in paragraph 7.1 below;
– the "*omitted or insufficient supervision*" by the Supervisory Board - as provided for in Art. 6, par. 1, letter d) of (It.) Legislative Decree no. 231/2001 - resulting from a conviction, even if not final, issued against the Company pursuant to (It.) Legislative Decree 231/2001 or by a sentence applying the penalty on request (so-called plea bargaining).

In particularly serious cases, the Board of Directors may, however, order - after hearing the opinion of the Board of Auditors - the suspension of the powers of the Supervisory Board and the appointment of an *interim* Supervisory Board.

The Supervisory Board may avail itself - under its direct supervision and responsibility - in the performance of the tasks entrusted to it, of the collaboration of all the functions

and structures of the Company or of external consultants, making use of their respective skills and professionalism. This power enables the Supervisory Board to ensure a high level of professionalism and the necessary continuity of action.

Each year, the Board of Directors allocates an expenditure budget to the SB, taking into account the latter's requests. The allocation of the budget allows the SB to operate autonomously and with the appropriate tools for the effective performance of the task assigned to it by this Model, in accordance with the provisions of (It.) Legislative Decree no. 231/01.

The SB may avail itself of the functions present in the Company by virtue of their respective competences, in particular the Human Resources Department (e.g. in understanding the evolution of the organisational structure and changes in the roles and responsibilities of senior figures).

4.3 Functions and powers of the Supervisory Board.

In general terms, the SB is entrusted with the task of:

- monitor compliance with the prescriptions of the Model for the prevention of offences pursuant to (It.) Legislative Decree no. 231/2001, by the addressees, in relation to the different types of offences envisaged;
- verify, in relation to changes in the corporate structure and regulatory changes, the actual capacity of the Model to prevent the commission of the offences referred to in (It.) Legislative Decree no. 231/01;
- also with the help of the various functions involved, assess the need to propose to the Board of Directors any updates to the Model, as a consequence of the evolution of the organisational structure or business operations and any regulatory changes;
- supervise the appropriateness of the system of delegated powers and assigned responsibilities, in order to ensure the effectiveness of the Model.

On an operational level, the following tasks are entrusted to the SB of O.R.I. Martin S.p.A.:

- drawing up and implementing a programme of periodic audits on the actual application of the company's control procedures in the "Areas of activity at risk" and on their effectiveness, bearing in mind that the primary responsibility for the checks on activities remains with the operational management and forms an integral part of the company's processes;
- collecting, processing and storing information relevant to compliance with the Model, as well as, where necessary, updating the list of information that shall be transmitted to the SB or kept at its disposal;
- monitoring activities in risk areas. To this end, the Supervisory Board is kept constantly informed of the development of activities in the aforementioned risk areas, and has free access to all company documentation. The SB shall also be notified by all personnel of any situations in the company's activities that may expose the company to the risk of offences;

- conduct appropriate internal investigations for the detection of alleged violations of the provisions of the Model;
- verify that the elements provided for by the Model for the different types of offences (e.g. adoption of standard clauses, implementation of procedures, segregation of responsibilities, etc.) are in any case adequate and meet the requirements of compliance with the provisions of the Decree, failing which it will be necessary to request an update of the elements themselves;
- with the cooperation of the various heads of the various corporate functions, promote suitable initiatives for the dissemination of knowledge and understanding of the Model among all personnel;
- coordinating with the various heads of the various corporate functions to ensure the preparation of the internal organisational documentation necessary for the functioning of the Model itself, containing instructions, clarifications or updates;
- report to the corporate functions in charge of disciplinary action any violations of the Code of Ethics by the personnel of O.R.I. Martin S.p.A. in order to obtain the necessary corrective measures;
- express opinions on the possible revision of company policies and procedures, in order to ensure consistency with the Code of Ethics.

The SB, in order to be able to fulfil its tasks in a comprehensive manner:

- has free access to all the functions of the Company, without prior information and without the need for any prior consent, in order to obtain any information or data deemed necessary for the performance of the tasks laid down in the Decree;
- may avail itself, under its direct supervision and responsibility, of the assistance of all the structures of the Company or of external consultants;
- has a budget defined by the Board of Directors as part of the annual *budgeting* process suitable to support the spending decisions necessary to fulfil its functions (specialist consultancy, missions and travel, updating, etc.);
- carries out its activities without the oversight of any other company body or structure, answering only to the Board of Directors.

4.4 Information obligations towards the SB. Information flows

The SB shall be promptly informed, by means of a specific internal communication system, of those acts, conduct or events that may lead to a breach of the Model or that, more generally, are relevant for the purposes of (It.) Legislative Decree no. 231/2001.

The obligations to provide information on any conduct contrary to the provisions contained in the Model fall within the broader duty of diligence and duty of loyalty of the employee established by the (It.) Civil Code.

Correct fulfilment of the duty to inform by the employee may not give rise to the application of disciplinary sanctions.

For the above-mentioned information to more easily flow, dedicated information channels are to be set up to protect the confidentiality of the whistle-blower‘s identity, and in particular:

(i) mailbox for Internet/intranet communications: odv.orimartin@orimartin.it
(ii) addressed postal letters: Ori Martin SpA, Organismo di Vigilanza D.lgs 231, Via C.Canovetti, 13 25128 BRESCIA

In this respect, the following general requirements apply:

- inspections by public authorities (e.g. Guardia di Finanza, ATS, etc.) shall be reported;
- any reports shall be collected relating to: i) the commission, or reasonable danger of the commission, of the offences referred to in the Decree; ii) "practices" that are not in line with the rules of conduct issued by the Company; iii) conduct that, in any case, may lead to a breach of the Model;
- any employee who becomes aware of a violation (or alleged violation) of the Model, or of a fact or conduct falling within the above list, shall contact their direct superior or, if the report is unsuccessful or the employee feels uncomfortable approaching his or her direct superior to make the report, report directly to the Supervisory Board;
- any employee who becomes aware of a fact or conduct falling within the list drawn up by the Supervisory Board referred to in the preceding paragraph shall report directly to the Supervisory Board;
- In order to effectively collect the reports described above, the SB shall inform all the persons concerned of the methods and forms of making such reports (by means of a confidential mailbox addressed directly to each member of the SB or by means of a dedicated mailbox); it is the right of the SB to define and communicate any alternative communication channels;
- The Supervisory Board assesses, at its discretion and under its responsibility, the reports received and the cases in which action is required.

The Supervisory Board, in compliance with (It.) Law No. 179 of 30 November 2017, shall act in such a way that those who report the aforementioned circumstances in good faith are guaranteed against any form of retaliation, discrimination or penalisation, and in any case the confidentiality of the identity of the whistle-blower is ensured, without prejudice to legal obligations and the protection of the rights of the Company or of persons wrongly accused and/or in bad faith.

According to (It.) Law No. 179 of 30 November 2017, personnel may report offences or irregularities of which they become aware in the course of their work. The report may be made through the communication tools available to employees described above or through the additional tools for collecting reports made available by the Company under PSQ Procedure 105 "Whistle-blowing Management";

4.5 Duty of the Supervisory Board to inform the corporate bodies.

The SB keeps the Managing Directors constantly informed, unless otherwise envisaged by this Model.

The SB immediately informs the Board of Directors of the occurrence of extraordinary situations (e.g.: significant violations of the principles contained in the Model, legislative innovations concerning the administrative liability of entities, significant changes in the organisational structure of the Company, etc.) and, in the case of reports received that are of an urgent nature, submits a written report to the Board of Directors and the Board of Auditors.

The SB is obliged to draw up a half-yearly written report to the Board of Directors, the Managing Directors and the Board of Auditors, which shall contain at least the following information:

a) a summary of the activities carried out during the six-month period by the SB;
b) a description of any problems that have arisen concerning the operational procedures for implementing the provisions of the Model;
c) a description of any new crime-risk activities identified;
d) reports received from internal and external persons concerning alleged violations of the provisions of this Model, of the prevention protocols and of the relevant implementation procedures, as well as violations of the provisions of the Code of Ethics, and the outcome of the audits on said reports;
e) the disciplinary procedures and any sanctions applied by the Company, with reference to violations of the provisions of this Model, the prevention protocols and the relevant implementation procedures, as well as to violations of the provisions of the Code of Ethics;
f) an overall assessment of the functioning and effectiveness of the Model with any proposals for additions, corrections or amendments;
g) reporting any changes in the regulatory framework that require updating of the Model;
h) a statement of expenses incurred.

The SB draws up an annual report summarising the activities carried out during the current year and a plan of activities planned for the following year, to be submitted to the Board of Directors, the Managing Directors and the Board of Auditors

The Board of Directors and the Board of Statutory Auditors have the right to summon the SB at any time to inform them of the activities of the office.
Meetings with corporate bodies to which the SB reports shall be documented, and the relevant documentation filed.

4.6 Information between Supervisory Bodies within the Group

The Supervisory Board of O.R.I. Martin S.p.A. may request information from the Supervisory Bodies of its subsidiaries, if such information is necessary for the performance of its control activities.

4.7 Information gathering and storage

All information, notifications, reports are kept by the Supervisory Board in a special paper and/or computer file for a period of at least 10 years. Without prejudice to the lawful orders of the Authorities, the data and information stored in the archive are only made available to persons outside the Supervisory Board with the latter‘s authorisation.

CHAPTER 5

DISCIPLINARY SYSTEM

5.1 Function of the disciplinary system

It. Legislative Decree 231/2001 indicates, as a condition for the effective implementation of the organisation, management and control model, the introduction of a disciplinary system capable of sanctioning non-compliance with the measures indicated in the model.

Therefore, the definition of an adequate disciplinary system constitutes an essential prerequisite of the exculpatory value of the organisation, management and control model with respect to the administrative liability of entities.

The sanctions provided for in the disciplinary system will be applied to any breach of the provisions contained in the Model regardless of whether an offence has been committed and regardless of the course and outcome of any criminal proceedings initiated by the judicial authorities.[53]

5.2 Measures against employees.

Compliance with the provisions and rules of conduct set out in the Model constitutes fulfilment by employees of their obligations under Art. 2104, second paragraph of the (It.) Civil Code; obligations of which the content of the Model is a substantial and integral part.

Violation of the individual provisions and rules of conduct set out in the Model by employees always constitutes a disciplinary offence.

Please note that non-management employees are subject to the applicable National Collective Agreement.

[53] As a matter of fact, as set out in Confindustria Guidelines, "Failure to comply with the measures laid down in the organisational model shall trigger the sanction mechanism provided for therein, regardless of whether or not criminal proceedings are instituted for the offence that may have been committed. On the contrary, a model can only be said to be effectively implemented when it deploys the disciplinary apparatus to counter prodromal behaviour. As a matter of fact, a disciplinary system aimed at punishing conduct that already constitutes an offence in itself would end up unnecessarily duplicating the sanctions imposed by the state system (punishment for the natural person and sanction for the entity under (It.) Legislative Decree 231). On the other hand, it makes sense to provide for a disciplinary apparatus if it operates as an internal safeguard within the company, which adds to and prevents the application of "external" sanctions by the state. As anticipated, the disciplinary system complements and gives effect to the organisational model, the purpose of which is to prevent offences from being committed, not to repress them when they have already been committed. At the same time, the decision to apply a sanction, especially an expulsion sanction, without waiting for the criminal trial, entails a rigorous ascertainment of the facts, without prejudice to the possibility of resorting to the institution of precautionary suspension when that ascertainment is particularly complex." Confindustria, Guidelines, cit., as updated in June 2021.

The measures indicated in the Model, non-compliance with which is intended to be sanctioned, are communicated by means of an internal circular to all employees, posted in a place accessible to all and binding on all employees of the Company.

Disciplinary measures may be imposed on employees in accordance with Art. 7 of the (It.) law of 20 May 1970, no. 300 (so called "Workers" Statute") and any applicable special regulations.

For non-management employees, these measures are those provided for in the disciplinary rules set out in Art. 23 of the applicable CCNL, namely, depending on the seriousness of the infringements:

- verbal warning
- written warning;
- fine of not less than three hours" basic pay and contingency or minimum pay and contingency;
- suspension from work and pay up to a maximum of three days;
- dismissal for misconduct pursuant to Art. 25 CCNL.

On each report of a violation of the Model, disciplinary action will be taken to ascertain the violation. In particular, at the assessment stage, the employee will be notified in advance of the charge and will also be granted a reasonable period of time to reply in order to defend himself. Once the breach has been ascertained, a disciplinary sanction proportionate to the seriousness of the breach committed and to the possible recidivism will be imposed on the perpetrator, failing which the disciplinary action will be dismissed.

It is understood that the procedures, provisions and guarantees provided for in Art. 7 of the Workers" Statute and, in the case of non-managerial employees, also by the agreed rules on disciplinary measures. In particular:

- no disciplinary measure may be taken against the employee without first notifying them of the charge and listening to their defence;
- for all disciplinary measures, a written reprimand shall be made to the employee, specifically stating the facts constituting the infringement;
- the disciplinary measure may not be issued until five days have elapsed since this notification, during which the employee may present their justification. If the measure is not issued within six days of the justifications submitted by the employee, they shall be deemed to have been accepted;
- previous disciplinary sanctions shall not be taken into account for any purpose two years after their application.

All acts relating to the disciplinary proceedings shall be communicated to the Supervisory Board for its assessments.

5.3 Violations of the Model and related sanctions.

In compliance with the relevant regulations and in accordance with the principles of typicality of violations and sanctions, O.R.I. Martin S.p.A. intends to bring to the attention of its employees the provisions and rules of conduct contained in the Model, the violation of which constitutes a disciplinary offence, as well as the applicable sanctions, taking into account the seriousness of the infringements.

Without prejudice to the obligations arising from the Workers" Statute, the conduct constituting a violation of the Model, accompanied by the relevant sanctions, are as follows:

- A worker who commits a non-serious breach of the internal procedures laid down in the Model (e.g. who fails to observe the prescribed procedures, fails to notify the Supervisory Board of the prescribed information, fails to carry out checks, etc.), or adopts, in the performance of activities in sensitive areas, a conduct that does not comply with the requirements of the Model, incurs a **written warning** .
- A **fine or suspension** shall be applied to any worker who is a repeat offender in violating the procedures laid down in the Model or in adopting, in the performance of activities in sensitive areas, a conduct that does not comply with the requirements of the Model, as well as to any worker who, in violating the internal procedures laid down in the Model or in adopting, in the performance of activities in sensitive areas, a conduct that does not comply with the requirements of the Model, engages in acts contrary to the interests of the Model, or any worker who is a repeat offender in offences punishable by written reprimand.
- An employee incurs **dismissal with notice** if he commits a breach of discipline and diligence at work which, although more serious than those referred to in the two preceding points, is not so serious as to render dismissal without notice applicable.
- An employee incurs **dismissal without notice** if he causes serious moral or material harm to the company or performs actions that constitute an offence under the law in connection with the conduct of the employment relationship.

The type and extent of each of the above sanctions will also be applied taking into account:

- the intentionality of the conduct or the degree of negligence, recklessness or inexperience with regard also to the foreseeability of the event;
- of the worker's overall conduct with particular regard to the existence or otherwise of disciplinary precedents of the same, within the limits allowed by law;
- of the worker's duties;
- of the functional position of the persons involved in the facts constituting the fault;
- the other special circumstances accompanying the disciplinary offence.

This is without prejudice to the prerogative of O.R.I. Martin S.p.A. to seek compensation for damages resulting from a breach of the Model by an employee. Any damages claimed will be commensurate:

- the level of responsibility and autonomy of the employee who committed the disciplinary offence;
- the existence of any disciplinary record against it;

- the degree of intentionality of its behaviour;
- the seriousness of its effects, by which is meant the level of risk to which the Company reasonably considers that it has been exposed, according to the provisions of the Decree, as a result of the conduct complained of.

The person ultimately responsible for the concrete application of the disciplinary measures described above is the Head of the Department in which the employee works. The latter shall take the relevant measures, after hearing the opinion of the Supervisory Board.

In any case, the SB shall be promptly informed of any act concerning disciplinary proceedings against a worker for violation of this Model, from the moment of the disciplinary notice. The SB is in any case entrusted with the task of verifying and assessing the suitability of the disciplinary system pursuant to and for the purposes of the decree.

In case of violation of the provisions and rules of conduct contained in the Model by managers, O.R.I. Martin S.p.A., once the responsibility of the infringer has been established, will take the measure deemed most appropriate. Should the violation of the Model lead to the breakdown of the relationship of trust between the Company and the employee, the sanction is dismissal for just cause.

5.4 Measures against directors.

Upon receiving notice of a breach of the provisions and rules of conduct of the Model by members of the Board of Directors, the SB shall promptly inform the Board of Auditors, the Managing Directors and the entire Board of Directors. The recipients of the information from the Supervisory Board may, in accordance with the provisions of the Articles of Association, take the appropriate steps to adopt the most suitable measures provided for by law.

5.5 Measures against statutory auditors.

The statutory auditors are not top managers, however, in relation to the position they occupy in the company, their involvement in violations of disciplinary rules is theoretically conceivable, and therefore to be avoided. Upon receiving notice of a breach of the provisions and rules of conduct of the Model by one or more auditors, the Supervisory Board shall promptly inform the entire Board of Auditors, the Managing Directors and the Board of Directors. The recipients of the information from the Supervisory Board may, in accordance with the provisions of the Articles of Association, take the appropriate measures, including, for example, calling a shareholders“ meeting, in order to adopt the most appropriate measures provided for by law.

5.6 Measures against business partners, agents, business procurers, consultants, collaborators.

Violation by commercial *partners*, agents, business procurers, consultants, external collaborators or other persons having contractual relations with the Company of the provisions and rules of conduct laid down in the Model in the context of their contractual relations with O.R.I. Martin S.p.A. constitutes a material breach for the purpose of termination of the contract, according to appropriately signed clauses.

This is, of course, without prejudice to the prerogative of O.R.I. Martin S.p.A. to claim compensation for further damages resulting from the violation of the provisions and rules of conduct laid down in the Model by the aforementioned third parties.

5.7 Measures to protect whistle-blowing

It is grounds for contestation and subsequent possible disciplinary sanctions against employees, directors and third parties according to the evaluation criteria set out above (seriousness, intentionality, etc.):

- Breach of confidentiality of the identity of persons who have reported according to (It.) Law 30/11/2017 No. 179, offences or irregularities of which they have become aware for work reasons.
- Making false reports made by illegitimately availing themselves of the faculties defined by (It.) Law 30/11/2017 No. 179 in order to obtain personal advantages or those of related parties or to harm other persons.
- Causing unlawful prejudice to persons who may be the subject of the reports received pursuant to (It.) Law 179/2017.

CHAPTER 6

TRAINING AND COMMUNICATION PLAN

6.1 Foreword

O.R.I. Martin S.p.A., in order to effectively implement the Model, intends to ensure proper dissemination of its contents and principles within and outside its organisation.

In particular, the objective of O.R.I. Martin S.p.A. is to extend the communication of the contents and principles of the Model not only to its own employees, but also to persons who, although not formally employees, work for the achievement of the objectives of O.R.I. Martin S.p.A. by virtue of contractual relations.

The communication and training activity will be diversified according to the addressees to whom it is addressed, but shall in any case be marked by principles of completeness, clarity, accessibility and continuity in order to enable the various addressees to be fully aware of those corporate provisions they are required to comply with and of the ethical standards that shall inspire their conduct.

Communication and training on the principles and contents of the Model are guaranteed by the Human Resources Director, who, according to the indications and plans of the Supervisory Board, identifies the best way to use these services (e.g.: training courses, information programmes, dissemination of information material).

The communication and training activities are under the supervision of the Supervisory Board, which is assigned the task, among others, of "promoting and defining initiatives for the dissemination of knowledge and understanding of the Model, as well as for the training of personnel and raising their awareness of the principles contained in the Model" and of "promoting and developing communication and training activities on the contents of the decree and the impact of the regulations on the company's activities and rules of conduct".

The content of the communication referred to in this chapter shall include, as an essential part, the Company's Code of Ethics.

6.2 Employees

Each employee is required to:

- acquire awareness of the principles and contents of the Model;
- know the operational modalities by which their activities shall be carried out;
- contribute actively, in relation to their role and responsibilities, to the effective implementation of the Model, reporting any shortcomings found in it;
- participate in training courses, differentiated according to the different sensitive activities.

In order to ensure an effective and rational communication activity, O.R.I. Martin S.p.A. intends to promote employees" knowledge of the contents and principles of the Model, with the degree of detail varying according to the position and role held by them.

By the Human Resources Department, each employee shall receive a copy of the Code of Ethics accompanied by a notice explaining that compliance with the principles contained therein is a condition for the proper conduct of the employment relationship.

The copy signed by the employee of this communication shall be kept at the disposal of the Supervisory Board by the Human Resources Department itself.

An electronic version of the full version of the Model will be made available in a special folder accessible to employees; in addition, a hard copy of the full version of the Model will be available at the Human Resources Department for free consultation by all employees.

Appropriate communication tools will be adopted to update employees about any changes to the Model, as well as any relevant procedural, regulatory or organisational changes.

The Human Resources Department is responsible for fulfilling the obligations set out in the preceding paragraphs.

The Supervisory Board reserves the right to promote any training activities it deems appropriate for the purpose of correctly informing and raising awareness within the company of the issues and principles of the Model.

6.3 Other recipients.

The activity of communicating the contents and principles of the Model shall also be addressed to third parties that have a relationship with O.R.I. Martin S.p.A. contractually regulated collaborative relationships or representing the Company without dependency.

In order to ensure awareness of the ethical principles inspiring the company‘s activities, O.R.I. Martin S.p.A. makes its Code of Ethics available on its website to suppliers/consultants/agents/business brokers, by inserting a clause in contracts with them which makes compliance with these principles a condition for the proper performance of the contract.

CHAPTER 7

ADOPTION OF THE MODEL - CRITERIA FOR UPDATING AND ADAPTING THE MODEL

7.1 Adoption of the model

O.R.I. Martin S.p.A. deemed it necessary to initiate and complete the internal project aimed at preparing an organisational, management and control model that complies with the requirements of Art. 6 of (It.) Legislative Decree no. 231/2001.

7.2 Audits and Checks on the Model

The Supervisory Board shall draw up an annual supervisory programme through which it plans, in principle, its activities, providing for: a calendar of activities to be carried out during the year, the determination of the time intervals between checks, the identification of the criteria and procedures for analysis, the possibility of carrying out unscheduled audits and checks.

In the performance of its activities, the Supervisory Board may avail itself of the support of functions and structures within the Company with specific competences in the corporate sectors from time to time subject to control and, with reference to the performance of the technical operations necessary for the performance of the control function, of external consultants. In this case, consultants shall always report the results of their work to the Supervisory Board

During audits and checks, the Supervisory Board is granted the broadest powers in order to effectively perform the tasks entrusted to it.

7.3 Update and Adaptation

The Board of Directors decides on the updating of the Model and its adaptation in relation to changes and/or additions that may become necessary as a result of:

i) violations of the provisions of the Model;
ii) changes in the internal structure of the Company and/or in the way the business activities are carried out;
iii) regulatory changes;
iv) audit findings.

Once approved, the changes and the instructions for their immediate application shall be communicated to the Supervisory Board, which, in turn, shall, without delay, make the same changes operative and take care of the correct communication of their contents within and outside the Company.

The Supervisory Board shall also, by means of a specific report, inform the Board of Directors of the outcome of the activities undertaken in compliance with the resolution providing for the updating and/or adaptation of the Model.

The Supervisory Board retains, in any case, precise duties and powers with regard to the care, development and promotion of the constant updating of the Model. To this end, it formulates observations and proposals, concerning the organisation and the control system, to the relevant corporate structures or, in cases of particular importance, to the Board of Directors.

In particular, in order to ensure that the changes to the Model are made with the necessary timeliness and effectiveness, without at the same time incurring any lack of coordination between the operational processes, the prescriptions contained in the Model and their dissemination, the Board of Directors has decided to delegate to the Supervisory Board the task of periodically making changes to the Model that relate to aspects of a descriptive nature, where necessary.

It should be noted that the expression "descriptive aspects" refers to elements and information deriving from acts decided by the Board of Directors (such as the redefinition of the organisational chart) or from company functions with specific delegated powers (e.g. new company procedures).

On the occasion of the presentation of the annual summary report, the Supervisory Board shall submit to the Board of Directors an information note of the changes made in the implementation of the powers received in order for the Board of Directors to ratify them.

It remains, in any case, the sole responsibility of the Board of Directors to decide on updates and/or adjustments to the Model due to the following factors:

- regulatory changes in the area of the administrative liability of entities;
- identification of new sensitive activities, or variation of those previously identified, also possibly connected with the start-up of new business activities;
- comments by the Ministry of Justice pursuant to Art. 6 of (It.) Legislative Decree no. 231/2001 and of Art. 5 et seq. of (It.) Ministerial Decree dated 26 June 2003, no. 201;
- commission of the offences referred to in the (It.) Legislative Decree no. 231/2001 by the recipients of the provisions of the Model or, more generally, of significant violations of the Model;
- detection of deficiencies and/or gaps in the Model's provisions following audits of its effectiveness.

The Model shall, in any case, be subject to periodic review proceedings to be decided by resolution of the Board of Directors.