

Posteitaliane

EXTRACT FROM THE ORGANISATIONAL MODEL

PURSUANT TO LEGISLATIVE DECREE NO.231 OF 8 JUNE 2001

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1. LEGISLATIVE DECREE NO. 231/2001

1.1 Legislative framework

Legislative Decree no. 231, governing “*the administrative liability of legal persons, companies and associations, including those without a legal personality*”, introduced into the Italian legal system a system of **administrative liability** (substantially related to criminal liability) **on the part of entities** (i.e. Companies, associations, consortia, etc, hereinafter referred to as “entities”, or “entity” in the singular form) for **a number of offences committed in the interests of, or to the advantage of, those entities**

- a) by physical persons that represent, administer or manage the entities or an organisational unit thereof provided with financial and functional autonomy, and by physical persons responsible for the official or *de facto* management and control of the entities;
- b) by physical persons subjected to the management or supervision of one of the subjects indicated above.

This accountability is applicable in addition to that of the physical persons who have actually committed the crime. The penalties provided for are both pecuniary and prohibitive (such as the suspension or revocation of licences and authorisations, prohibition from negotiating with the Public Administration (PA), prohibition from carrying out activity, exclusion from or revocation of financing and contributions, prohibition from advertising goods and services).

The liability provided for by the Decree also applies to offences committed abroad, provided that the pertinent action has not been taken by the State in the place where the offence was committed.

Art. 6 of Legislative Decree 231/01 provides for a specific form of exoneration from administrative liability (the so-called exemption) where the entity is able to demonstrate:

- a) that prior to the commission of any illegal acts it has adopted and effectively implemented models of organisation and management suitable to prevent offences of the type which have occurred;
- b) that the task of overseeing the functioning of and compliance with the Models and of making sure they are kept up-to-date has been entrusted to an internal body with independent powers of initiative and control (hereinafter referred to as the “Supervisory Body”);
- c) that the persons who have committed the offence have fraudulently eluded the above-mentioned models of organisation and management;
- d) that there has not been any failure to supervise or insufficient supervision by the Body described above under b).

The adoption and effective implementation of a Model (as per letter a) above) is also relevant to the case provided for under art. 5, paragraph 1 letter b) of the decree, in accordance with which the entity is held liable if the commission of the offence “has been made possible by failure to comply with the management or supervisory obligations” that must be carried out by persons in charge of representing, administering or managing the entity or an organisational unit

thereof provided with financial and functional autonomy, and by physical persons responsible for the official or *de facto* management and control of the entity.

The Decree explicitly states that failure to comply shall not subsist if the body, prior commission of the offence, adopted and effectively implemented a model of organisation, management and control suitable to prevent the offences of the type that occurred.

With regard to this hypothesis, the Model, taking account of the nature, extent and type of activity carried out, must contain measures suitable to:

- ensure activities are conducted in compliance with the law;
- identify risk situations and proceed to the timely elimination thereof.

Effective implementation of the model requires:

- periodic checks, with changes made in the event that significant breaches of the regulations are discovered, or when changes take place in the organisation or the activity;
- a system of penalties for failure to comply with the measures indicated in the model.

1.2 Types of offences provided for by Legislative Decree 231/01

The offences for which the entity has administrative liability, in accordance with the provisions of the Decree, as amended, fall under the categories listed below.

1.2.1 Offences committed in dealings with the Public Administration

These refer to a series of offences committed in dealings with the Public Administration, governed by *arts. 24 and 25*. They are, specifically:

- misappropriation of contributions, financing or other funding from the State or other public entities (art. 316-ter Italian Criminal Code);
- fraud to the detriment of the State or other public entities (art. 640, paragraph 1, no. 1 Italian Criminal Code);
- aggravated fraud to obtain public funding (art. 640-bis Italian Criminal Code);
- IT fraud to the detriment of the State or other public entities (art. 640-ter Italian Criminal Code);
- corruption in official proceedings (art. 318 Italian Criminal Code);
- corruption in acts contrary to official duties (art. 319 Italian Criminal Code);
- judicial corruption (art. 319-ter Italian Criminal Code);
- instigation of corruption (art. 322 Italian Criminal Code);
- extortion (art. 317 Italian Criminal Code);
- embezzlement to the detriment of the State or other public entities (art. 316-bis Italian Criminal Code).

1.2.2 IT crime and illegal processing of data

Law no. 48 of 18 March 2008, "Ratification and implementation of the Council of Europe Convention on Cybercrime, held in Budapest on 23 November 2001, and measures for adjusting the entire system" has extended the range of offences for which the company may be held liable, and art. 7 introduced into Legislative Decree 231/01 art. 24-bis for the following offences:

- a) unauthorised access to an IT or electronic system (art. 615-ter Italian Criminal Code)
- b) unauthorised possession and dissemination of codes for access to IT or electronic systems (art. 615-quater Italian Criminal Code);
- c) - dissemination of equipment, devices or computer programs designed to damage or interrupt an IT or electronic system (art. 615-quinquies Italian Criminal Code);
 - interception, prevention or unlawful interruption of IT or electronic communication (art. 617-quater Italian Criminal Code);
 - installation of equipment designed to intercept, prevent or interrupt IT or electronic communication (art. 617-quinquies Italian Criminal Code);
 - damage to information, data and computer programs (art. 635-bis Italian Criminal Code);
 - damage to information, data and computer programs used by the State or other public entities or publicly useful entities (art. 635-ter Italian Criminal Code);
 - damage to IT or electronic systems (art. 635-quater Italian Criminal Code);
 - damage to IT or electronic systems of publicly useful entities (art. 635-quinquies Italian Criminal Code);
- d) forgery of public computer documents or documents valid for probative purposes (art. 491-bis Italian Criminal Code);
- e) IT fraud regarding the certification of an electronic signature (art. 640-quinquies Italian Criminal Code).

1.2.3 Organised crime

Law no. 94 of 15 July 2009, "Provisions regarding public security" has inserted into the decree art. 24 *ter* relating to organised crime, with reference to:

- criminal conspiracy (art. 416 Italian Criminal Code);
- criminal conspiracy for the purposes of committing crimes related to enslavement or servitude or the perpetuation thereof, human trafficking, purchase and transfer of slaves and breaches of the regulations governing illegal immigration, as per art. 12 of Legislative Decree no. 286/1998 (art. 416 Italian Criminal Code, paragraph six);
- mafia-type conspiracy and crimes committed under the conditions provided for in article 416-bis of the Italian Criminal Code or for the purpose of facilitating the activity of the associations set out in said article (art. 416-bis Italian Criminal Code);
- exchange of favours between politicians and the mafia in the context of elections (art. 416-ter Italian Criminal Code);
- kidnapping for the purposes of robbery or extortion (art. 630 Italian Criminal Code);
- conspiracy for the purposes of the illegal trafficking of narcotic or psychotropic substances (art. 74. of Presidential Decree no. 309 of 9 October 1990);
- illegal manufacture, introduction into the Italian State, sale, transfer, possession and carriage in public, or in a place open to the public, of

weapons of war or similar or parts thereof, of explosives, of illegal weapons and of more common firearms (art. 407, paragraph 2, lett. a), n.5) Italian Criminal Procedure Code).

1.2.4 Counterfeiting of money, legal tender, duty stamps and means or signs of identification.

Art. 6 of Law no. 409 of 23 November 2001, "Urgent provisions in view of the introduction of the Euro", inserted into the decree art. 25-bis, aimed at punishing counterfeiting of money, legal tender and duty stamps. Specifically, the article provides for the punishment of:

- counterfeiting of money, spending of counterfeit money and complicit introduction into the Italian State of counterfeit money (art. 453 Italian Criminal Code);
- forgery of money (art. 454 Italian Criminal Code);
- non-complicit spending and introduction into the Italian State of counterfeit money (art. 455 Italian Criminal Code);
- spending of counterfeit money received in good faith (art. 457 Italian Criminal Code);
- counterfeiting duty stamps, introduction into the Italian State, purchase, possession or placing in circulation of counterfeit duty stamps (art. 459 Italian Criminal Code) and use of counterfeit or forged duty stamps (art. 464 Italian Criminal Code);
- falsification of watermarked paper for the production of legal tender or duty stamps (art. 460 Italian Criminal Code) and production or possession of watermarks or instruments to be used for the falsification of money, of duty stamps or watermarked paper (art. 461 Italian Criminal Code).

Law no. 99 of 23 July 2009, "Provisions for the development and internationalisation of enterprises and on energy matters" has updated the terms of art. 25 *bis*, extending the liability attributable to entities for the following offences:

- counterfeiting, forgery or use of brands or distinctive signs or patents, models and drawings (art. 473 Italian Criminal Code);
- introduction into the Italian State and trade of products with false signs (art. 474 Italian Criminal Code).

1.2.5 Crimes against industry and commerce

Law no. 99 of 23 July 2009, "Provisions for the development and internationalisation of enterprises and on energy matters" has inserted into the decree art. 25 *bis*.1, which extends the administrative liability of the entities for the following offences:

- interference with the freedom of industry or commerce (art. 513 Italian Criminal Code);
- commercial fraud (art. 515 Italian Criminal Code);
- sale of non-genuine food substances as genuine (art. 516 Italian Criminal Code);

- sale of industrial products with false signs (art. 517 Italian Criminal Code);
- production and sale of goods made through unlawful seizure of industrial property titles (art. 517-ter Italian Criminal Code);
- falsification of geographical indications or denominations of origin of agricultural produce (art. 517-quater Italian Criminal Code);
- unlawful competition with threats or violence (art. 513-bis Italian Criminal Code);
- fraud committed against national industries (art. 514 Italian Criminal Code).

1.2.6 Corporate offences

Art. 3 of Legislative Decree no. 61 of 11 April 2002, in force from 16 April 2002, within the framework of the corporate law reform process, introduced art. 25-ter, which extends administrative liability to the following corporate offences:

- false company disclosures (art. 2621 Italian Civil Code);
- false company disclosures damaging shareholders or creditors (art. 2622, paragraphs 1 and 3, Italian Civil Code);
- false information in Audit firm reports or notifications (art. 2624, paragraphs 1 and 2, Italian Civil Code)¹;
- obstruction of control (art. 2625, paragraph 2, Italian Civil Code);
- fictitious formation of capital (art. 2632, Italian Civil Code);
- unlawful return of capital (art. 2626 Italian Civil Code);
- illegal distribution of profits or provisions (art. 2627 Italian Civil Code);
- unlawful operations on shares or company stakes or stakes in the parent company (art. 2628, Italian Civil Code);
- operations damaging creditors (art. 2629, Italian Civil Code);
- unlawful distribution of company assets by liquidators (art. 2633, Italian Civil Code);
- unlawful influence on shareholders' meetings (art. 2636, Italian Civil Code);
- stock manipulation (art. 2637 Italian Civil Code);
- obstruction of the exercise of the functions of public supervisory authorities (art. 2638, Italian Civil Code);
- failure to provide notification of a conflict of interests (art. 2629 *bis* Italian Civil Code).

1.2.7 Crimes for the purpose of committing terrorism or subverting the democratic order provided for by the Italian Criminal Code and special laws

Art. 25-quater, introduced by art. 3 of Law no.7 of 14 January 2003, which ratifies and executes the Internal Convention for the Suppressing of the Financing of

¹ Legislative Decree no.39/2010 on the legal audit of accounts cancelled art. 2624 of the Civil Code, but at the same time introduced, in art. 27, the offence of providing “false information in reports or notifications made by persons in charge of the legal audit of accounts”; therefore, given the current uncertainty of the pertinent regulatory framework, the offence is prudently indicated as being subject to administrative liability on the part of the entities”.

Terrorism (New York, 9 December 1999), refers generally to all the current and future hypotheses regarding terrorism and subversive offences provided for by the Italian Criminal Code and the Special Laws.

Art. 1 of Law no. 15 of 6 February 1980 provides for an aggravating circumstance to be applied to any offence that is “committed for the purpose of terrorism or subversion of the democratic order”.

1.2.8 Crimes against the person and crimes against the individual

The area of crimes against the person was introduced by Law no. 7 of 9/01/06 – which added art. 25-*quater* - 1 and regards the prohibition of female genital mutilation practices.

The legislative area regarding crimes against the individual was introduced by Law no. 228 of 11/08/2003 – which added art. 25-*quinquie*, which refers to specific articles contained in Sect. I, chapter III, title XII, Book II of the Italian Criminal Code:

- enslavement or servitude or perpetuation thereof (art. 600 Italian Criminal Code);
- human trafficking (art. 601 Italian Criminal Code);
- purchase and transfer of slaves (art. 602 Italian Criminal Code);
- prostitution of minors (art. 600-*bis* Italian Criminal Code);
- pornography involving minors (art. 600-*ter* Italian Criminal Code);
- possession of pornographic material (art. 600-*quater* Italian Criminal Code);
- tourism activities for the purpose of exploiting prostitution of minors (art. 600-*quinquies* Italian Criminal Code).

1.2.9 Crimes pertaining to the abuse of privileged information and rigging of the market

In relation to the regulations governing Market Abuse (Part V Title I – bis, Section II of the Consolidated Finance Law), Legislative Decree 231/01 (art. 25-*sexies*) introduced the offence of abuse of privileged information (art. 184 of the Consolidated Finance Law) and of rigging of the market (art. 185 of the Consolidated Finance Law).

Specifically, privileged information (*insider trading*) is the offence whereby anyone in possession of information that is not public knowledge reveals that information to third parties, or uses it in order to induce others to make purchase and sales transactions regarding financial instruments. Such information allows subjects who use it to make choices based on asymmetry of information, giving them an advantage over other investors operating in the same market.

The offence of rigging of the market consists of spreading false or misleading information, conducting simulated operations or using other means specifically intended to cause significant alterations in the price of financial instruments.

Article 187-*quinquies* of the Consolidated Finance Law introduces a specific provision of administrative liability on the part of the entities regarding market abuse (arts. 187-*bis* and 187-*ter* of the Consolidated Finance Law) committed in their interest or to their advantage by company staff in top positions or subordinates thereof.

1.2.10 Involuntary manslaughter or serious or very serious accidental injury committed in breach of the accident prevention and healthy and safety in the workplace regulations

Law no. 123/07 introduced two new types of “offences-conditions for offences” within the governing regulations as per Legislative Decree 231/01. Art.25-septies of the Decree, subsequently replaced by art. 300 of Legislative Decree 81/08 provides for the extension of the administrative liability of the entity to the offences of involuntary manslaughter and serious or very serious accidental injury (arts. 589 and 590 of the Italian Criminal Code), committed in breach of the accident prevention and healthy and safety in the workplace regulations.

This legislative measure, which joins the framework of regulations for the protection of workers' health and safety in the workplace, establishes for the first time that Companies may be held liable also for “involuntary” offences. This marks a departure from the provisions hitherto in place regarding offences provided for in Legislative Decree 231/01, which required the presumption of wilful misconduct (i.e. that the criminal action had been carried out consciously and voluntarily).

It should be noted that further new elements regarding health and safety in the workplace were introduced by Legislative Decree no. 106 of 2009.

1.2.11 Money laundering, handling of stolen goods and the use of money, assets or profits from unlawful sources and cross-border offences

Legislative Decree no. 231 of 21 November 2007, regarding the implementation of directive 2005/60/CE on preventing the use of the financial system for the purposes of laundering proceeds from criminal activities and the financing of terrorism, as well as directive 2006/70/CE containing measures for the implementation thereof, introduced into Legislative Decree 231/01 art.25-octies, which extends the scope of administrative liability of entities for offences related to money laundering (art. 648 bis Italian Criminal Code), handling of stolen goods (art 648 Italian Criminal Code) and the use of money, assets or profits from unlawful sources (art. 648 ter Italian Criminal Code).

Art. 648 of the Italian Criminal Code establishes that, outside of cases of conspiracy to commit the crime, handling of stolen goods means the purchase, receipt or concealment of money or goods deriving from any kind of offence for the purposes of making profit for self or others, on the part of individuals not directly involved in committing the offence.

Art. 648-bis of the Italian Criminal Code establishes that, outside of cases of conspiracy to commit the crime, money laundering means “substituting or transferring money, goods or other assets deriving from non-intentional criminal acts, or carrying out transactions in relation thereto in such a way as to prevent identification of the criminal origin thereof”.

Art. 648-ter of the Italian Criminal Code also establishes that, outside of cases of conspiracy to commit the crime and of the cases provided for by articles 648 (handling of stolen goods) and 648-bis (money laundering), the use of money, assets or profits from unlawful sources means “using money, goods or other proceeds deriving from criminal activity for economic or financial activities”.

In addition, Law no. 146/2006 ratified the EU legislation to combat cross-border organised crime relating to those offences committed by an organised group in

more than one country, or those committed in a single country on the part of a criminal organisation operating on an international scale. This law comprises the following types of offences: criminal conspiracy (art. 416 Italian Criminal Code); mafia-type conspiracy (art. 416bis Italian Criminal Code); perverting the course of justice (art. 377bis and 378 Italian Criminal Code); migrant trafficking (Legislative Decree no. 286/98 as amended).

1.2.12 Breach of copyright

Law no. 99 of 23 July 2009, "Provisions for the development and internationalisation of enterprises and on energy matters" introduced into Legislative Decree no. 231/2001 art. 25 *novies*, which provides for the extension of administrative liability of the entity to the following offences:

- Making a protected intellectual work or part thereof available to the public, through an electronic network system or connections of any kind, without the right thereto (art. 171, para. 1, lett *a-bis*), L. 633/1941).
- Offences as per the point above committed in relation to someone else's work not destined for publication, involving usurpation of the paternity of the work, deformation, mutilation or other alterations to the work liable to cause offence to the honour or reputation of the author (art. 171, para. 3, Law no. 633/1941).
- Unlawful duplication, for the purposes of making a profit, of computer programs; importation, distribution, sale, possession for commercial or entrepreneurial purposes or leasing of programs contained on supports without SIAE (Italian Society of Authors and Publishers) markings; preparation of means designed to allow or facilitate the arbitrary removal or functional circumvention of computer program protection devices (art. 171-*bis*, para. 1, Law. 633/1941).
- Reproduction on supports without SIAE markings, transfer to other supports, distribution, communication or demonstration in public of the content of a data bank for the purposes of profiting therefrom; extraction or re-use of a data bank in breach of the provisions regarding the rights of the creator of the databank and the users thereof; distribution, sale or leasing of data banks (art. 171-*bis*, para. 2, Law. 633/1941).
- Offences committed for profit, not for personal use and characterised by one of the following behaviours, as described in art. 171-*ter*, para 1, Law 633/1941:
 - unlawful duplication, reproduction, transmission or circulation in public, by any means, in whole or in part, of intellectual works destined for television, cinema, sale or hire, of discs, tapes or similar supports or any other support able to contain phonograms or videograms of assimilated musical, cinema or audiovisual works or sequences of moving images (lett. *a*);
 - unlawful reproduction, transmission or circulation in public, by any means, in whole or in part, of literary, dramatic, scientific or educational, musical or dramatic-musical and multimedia works, including those that are part of collective works or taken from data banks (lett. *b*);
 - introduction into Italian territory, possession for the purposes of sale and distribution, placing on the market for sale, hire or transfer of any kind, projection in public, transmission via television by any means, of the unlawful copies or reproductions mentioned at letters *a*) and *b*) without being party to said duplication or reproduction (lett. *c*);

- possession for the purposes of sale and distribution, placing on the market for sale, hire or transfer of any kind, projection in public, transmission via television or radio by any means, of video cassettes, music cassettes or any other support able to contain phonograms or videograms of musical, cinema or audiovisual works or sequences of moving images, or any other support for which SIAE markings are compulsory and that is devoid of said markings, or bears forged or altered markings (lett. *d*);
- re-transmission or circulation by any means of an encrypted service received by means of equipment or parts of equipment used for decoding conditional access transmissions without the agreement of the authorised distributor (lett. *e*);
- introduction into Italian territory, possession for the purposes of sale and distribution, distribution, sale, hire, transfer of any kind, commercial promotion, installation of special decoding devices or elements that allow access to an encrypted service without payment of the due fee (lett. *f*);
- manufacture, importation, distribution, sale, hire, transfer of any kind, advertising for sale or hire or possession for commercial purposes, of equipment, products or components or services for commercial purposes or primarily aimed at bypassing effective technological protection measures, or designed, produced, adjusted or made with the intention of making it possible or easier to bypass such measures (lett. *f-bis*);
- unlawful removal or alteration of electronic information of the system of rights referred to in article 102-*quinquies*, or the distribution, importation for the purposes of distribution, broadcast via radio or TV, communication or making available to the public of works or other protected materials from which said electronic information has been removed or altered (lett. *h*).
- Offences characterised by one of the following behaviours, as described in art. 171-*ter*, para 2, Law. 633/1941:
 - unlawful importation, reproduction, duplication or transmission, unlawful importation, circulation, sale or trade or transfer of any kind of over 50 copies or numbers of works protected by copyright and rights related thereto (lett. *a*);
 - insertion, for profit, into an electronic network system, through connections of any kind, or an intellectual work or part thereof that is protected by copyright, in breach of the exclusive right of the author to present said work to the public (lett. *a-bis*);
 - conduct provided for under art. 171-*ter*, para. 1, Law. 633/1941, on the part of anyone involved in business activities pertaining to the reproduction, distribution, sale or marketing or importation of works protected by copyright and rights related thereto (lett. *b*);
 - promotion or organisation of the unlawful activities referred to in art. 171-*ter*, para. 1, Law. 633/1941 (lett. *c*).
- Failure to provide SIAE with the identification data of supports on which SIAE markings do not appear, on the part of the manufacturers or importers of such supports, or false declarations regarding obligations related to the markings. (art. 171-*septies*, Law. 633/1941).
- Fraudulent production, sale, importation, promotion, installation, modification, use for public and private purposes of equipment or parts of equipment used for decoding conditional access audiovisual broadcasts via airwaves, satellite or cable, in analogue or digital format (art. 171-*octies*, Law. 633/1941).

1.2.13 Instigation not to testify or to render false statements to the Legal Authorities

Law no. 116 of 3 August 2009, "Ratification and implementation of the Convention of the United Nations Organisation against Corruption, adopted by the General Assembly of the UN on 31 October 2003, introduced administrative liability of entities for offences set out in art. 377 bis of the Italian Criminal Code "Instigation not to testify or to render false statements to the Legal Authorities" (art. 25 *decies* of Legislative Decree no. 231/01).

1.2.14 Environmental offences

Legislative Decree no. 121 of 7 July 2011, issued for the implementation of directive 2008/99/CE on the criminal protection of the environment, and of directive 2009/123/CE, containing modifications to directive 2005/35/CE on pollution caused by ships and the introduction of penalties for breaches of the directive, introduced into Legislative Decree no. 231/2001 art. 25-*undecies*, which extends the administrative liability of entities to "Environmental Offences" committed in the interest or to the advantage of said entities.

These complex, detailed regulations provide for the following types of offences:

- a) Offences provided for under the Italian Criminal Code
 - art. 727 bis (killing, destruction, capture, removal or possession of protected species of wild animals or plants)
 - art. 733 bis (destruction or deterioration of habitats within a protected area)
- b) Offences provided for under Legislative Decree no. 152/2006 ("Environment Code")
 - art. 137, paragraphs 2, 3, 5, first and second sentences, 11 and 13 (industrial waste water discharge)
 - art. 256, paragraphs 1, letters a) and b), 3, first and second sentences, 5 and 6, first sentence (unauthorised waste management activities)
 - art. 257, paragraphs 1 and 2 (reclamation of sites)
 - art. 258, paragraph 4, second sentence (obligation to provide notification and to keep compulsory registers and forms)
 - art. 259, paragraph 1 (illegal waste trafficking)
 - art. 260, paragraphs 1 and 2 (activities organised for the purpose of illegal waste trafficking)
 - art. 260-bis, paragraphs 6, 7, second and third sentences, 8, first and second sentences (IT system for verifying the traceability of waste – SISTRI)
 - art. 279, paragraph 5 (protecting the air and reducing emissions into the atmosphere)
- c) Offences provided for under Law no. 150/1992 ("Regulations governing offences regarding the international trade in animal and plant species")
 - art. 1, paragraphs 1 and 2, art. 2, paragraphs 1 and 2, art. 3 bis, paragraph 1, art. 6, paragraph 4 (trade, use and transport of animals or plants and possession of live specimens of wild or dangerous species)
- d) Offences provided for under Law no. 549/1993 ("Measures for the protection of the ozone layer and the environment")
 - art. 3, paragraph 6 (cessation and reduction of the use of damaging substances)
- e) Offences provided for under Law no. 202/2007 ("Pollution of the sea caused by ships")
 - art. 8, paragraphs 1 and 2 (intentional pollution of the marine environment)

- art. 9, paragraphs 1 and 2 (intentional pollution of the marine environment).

2. ORGANISATION, MANAGEMENT AND CONTROL MODEL

2.1 Aims pursued by adopting the Model

The aim of the Model adopted by Poste Italiane S.p.A – a sole shareholder company - is to build up a structured, organised system of procedures and other regulatory instruments – contained in the Document System “Compendium of Procedures” – and control activities, aimed principally at preventing (through prior controls) the commission of the offences provided for by the Decree.

Specifically, by identifying the activity areas at risk and putting procedures in place to deal with them, the Model aims to:

- make all those who operate in the activity areas at risk in the name and on behalf of Poste Italiane aware of the risk that a breach of the provisions reported here may lead to their being held to have engaged in an unlawful act subject to penal and administrative penalties, not only for themselves but also for the Company;
- emphasise that such forms of unlawful behaviour are strongly condemned by Poste Italiane, in that (even where the Company was apparently in a position to benefit thereby) they are contrary to the law and to the ethical and company principles that the Group follows in pursuing its mission;
- permit the Company, thanks to the monitoring carried out on the activity areas at risk, to intervene in a timely manner to prevent or deal with the commission of offences.

In addition to the principles already indicated, the key points of the Model involve:

- identifying the areas of activity at risk, i.e. the activities within the scope of which offences may be committed, and highlighting the main phases that characterise individual operations at risk;
- maintaining adequate company procedures to safeguard the areas of activity at risk, integrating those procedures with the regulation of the control systems applied to company processes;
- raising awareness of rules of conduct and established procedures and ensuring they are spread through all levels of the company;
- attributing to the Supervisory Body specific tasks regarding the supervision and implementation of the provisions contained in the Model;
- verifying the effective compliance and efficacy of the Model and the related company procedures referred to above;
- implementation of an adequate system of penalties.

2.2 Amendments to the Model

(omissis)

2.3 Intended recipients of the Model

The recipients of the model are all those who work to achieve the aims and objectives of Poste Italiane S.p.A.

2.4 Identification of risks and system for governing the procedures

In relation to the individual types of offences provided for by Legislative Decree 231/01, an analysis is carried out of the company context in order to highlight where and how events liable to be damaging to the objectives indicated in the above-mentioned Decree may take place.

(omissis)

Based on the indications and outcomes of this analysis, the individual company Departments, identified as **Process Owners**, as described in the following paragraph, draw up and implement the company procedures relating to the areas of activity at risk, also by adding to and completing existing company procedures, with the aid of the Human Resources Department and in coherence with the criteria contained in the specific Guidelines issued by the Human Resources and Organisation Department.

The procedures are published in the Document System "**Compendium of Procedures**", in accordance with the provisions of the Document Management Procedure "Compendium of Procedures" and in coherence with the criteria contained in the specific Guidelines issued by the Human Resources and Organisation Department.

2.4.1 Role and identification of the Process Owners

In order to guarantee the ongoing efficacy of the Model, Poste Italiane identifies a **Process Owner**, responsible for organising the range of activities carried out within the framework of sensitive processes regarding the areas of activity at risk identified.

(omissis)

2.5 Areas of activity at risk and relevant organisational/management protection measures

For each type of offences listed, below are the results of the risk analysis that takes account of the advantages Poste Italiane could obtain if such risks materialised.

For all areas of activity at risk, the following general organisational/management protection measures apply:

- the Code of Ethics of Poste Italiane, the ethical Code of Bancoposta and the Code of conduct of Suppliers and Partners (as per paragraph 7);
- the System for attributing powers and proxies to top management levels on the part of the Managing Director;
- regulatory instruments that govern the process in general terms;
- system of penalties (as per paragraphs 5 and 6).

With regard to some particular areas of risk, “ad hoc” Committees come into play, responding to the need for development and Governance regarding specific company processes.

For some types of activities exposed to the risk of offences being committed, the main specific organisational/management protection measures have also been indicated below.

With regard to these measures, as an integration to the indications provided in the following paragraphs, reference should be made – given that they are pertinent to various areas at risk of offence (e.g. offences against the Public Administration, corporate offences, organised crime offences, money laundering offences) – to the activities and checks carried out within the company for the purpose of compliance with the obligations regarding the traceability of financial flows with reference to public tenders for works, services and supplies, introduced by Law no. 136 of 13 August 2010 n. 136 - “Extraordinary plan to combat mafia organisations” (art. 3: “traceability of financial flows”).

2.5.1 Activities at risk with regard to offences against the Public Administration

(omissis)

2.5.2 Activities at risk with regard to IT crime and the unlawful processing of data

(omissis)

2.5.3 2.5.3 Activities at risk with regard to organised crime

(omissis)

2.5.4 Activities at risk with regard to counterfeiting of money, legal tender, duty stamps and means or signs of identification

(omissis)

2.5.5 Activities at risk with regard to crimes against industry and commerce

(omissis)

2.5.6 Activities at risk with regard to corporate offences

(omissis)

2.5.7 Activities at risk with regard to crimes for the purpose of committing terrorism or subverting the democratic order, crimes against the person and crimes against the individual

(omissis)

2.5.8 Activities at risk with regard to crimes pertaining to the abuse of privileged information and rigging of the market

(omissis)

2.5.9 Activities at risk with regard to involuntary manslaughter or serious and very serious accidental injury committed in breach of the accident prevention and healthy and safety in the workplace regulations

(omissis)

2.5.10 Activities at risk with regard to money laundering and handling of stolen goods

(omissis)

2.5.11 Activities at risk with regard to breach of copyright

(omissis)

2.5.12 Activities at risk with regard to instigation not to testify or to render false statements to the Legal Authorities

(omissis)

2.5.13 Activities at risk with regard to environmental offences

(omissis)

2.6 Adoption of Organisational Models in Companies belonging to the Poste Italiane Group

In exercising their autonomy, the individual Companies in the Group are directly and exclusively responsible for the adoption and implementation of their respective Organisational Model, which must comply with the provisions of arts. 6 and 7 of the decree and with the requirements below.

The adoption of the Organisational Model is resolved upon by the respective boards of Directors or Sole Directors, in compliance with the legislation relating to the duties of directors and taking account of the interests of the individual Company as a subsidiary of a more complex Group.

In adopting the Organisational Model, the Companies in the Group must take account of the indications contained in the Poste Italiane Model and of any indications provided by Poste Italiane aimed at guiding and coordinating the subsidiaries.

In implementing these indications, the Subsidiaries shall consider other specific areas of risk that may regard the particular activity carried out by each subsidiary, following the analysis of the organisational structure and company operations.

In adopting their own Models, the Boards of Directors of the individual Companies in the Group, or the Sole Directors, shall at the same time appoint their own Supervisory Body. These Supervisory Bodies are exclusively responsible, within the framework of the Company they belong to, for carrying out checks on how the above activities are conducted and on the functioning of and compliance with the Model of the Company they answer to.

3. SUPERVISORY BODY

3.1 Nature, qualification, appointment and duration in office of the Supervisory Body

The Supervisory Body of Poste Italiane is composed of three members with proven experience and skills, external to the Company, in possession of the requisites of honourability, professionalism and independence required for members of the Board of Directors. The three members are appointed by the Board of Directors, which also sets the remuneration payable to them. The Supervisory Body remains in office for three years, and its members may not be re-appointed more than once.

The Supervisory Body has independent powers of initiative and control, and is provided with adequate resources to carry out its task. The body has a Secretariat and its own internal set of regulations.

(omissis)

3.2 Causes of ineligibility, lapse of appointment and revocation of the Supervisory Body

Members of the Supervisory Body may not be elected or remain in their position if they have:

- acted, in the three years preceding their appointment to the Supervisory Body, as executive director in companies subject to bankruptcy proceedings, administrative compulsory liquidation or similar procedures;
- been sentenced, even provisionally, or entered into a plea-bargaining agreement, in Italy or abroad, for offences for which entities may be held administratively liable pursuant to Legislative Decree no. 231 of 2001;
- been sentenced, even provisionally, or entered into a plea-bargaining agreement for a penalty disqualifying them, even temporarily, from holding public office or management positions for legal persons or companies.

Members of the Supervisory Body may be revoked for:

- in-existent or inadequate supervision on the part of the Supervisory Body resulting in the Company being sentenced, even provisionally, pursuant to Legislative Decree no. 231 or 2001, or in a plea-bargaining agreement;
- serious failure to exercise its functions and/or powers on the part of the Supervisory Body.

Revocation is resolved upon by the Board of Directors and the relevant motion is passed with the vote of two thirds of the members present.

In the event the appointment of one of the members of the Supervisory Body lapses or is revoked, the Board of Directors shall see to it that s/he is promptly replaced.

3.3 Duties and powers of the Supervisory Body

The task of supervising the functioning of and compliance with the Organisational Model is carried out by the Supervisory Body, also by examining all the auditing reports drawn up by the Internal Control Department, or by other company structures entrusted with carrying out control functions, on matters regarding Legislative Decree 231/01, which shall see to it that said reports are transmitted to the Body each time they are sent to the Chairman or Managing Director of the Company.

The task of updating the Organisational Model in line with changes to the organisational structure and with any other requirements that may arise is carried out by the Supervisory Body through reasoned proposals made to the Managing Director, who will submit them to the Board of Directors for approval.

For the purposes of the above, the Managing Director sees to it that the Supervisory Body has access to company procedures each time they are issued, and the Corporate Affairs Department transmits to the Supervisory Body the resolutions with which the Board of Directors attributes proxies to its members, as well as the proxies granted by said Directors to company staff.

With regard to the sensitive areas of activity referred to at point 2.5 above, the Supervisory Body, through the Internal Control Department, prepares a Yearly Plan of checks aimed at evaluating the effective application, adequacy and functionality of the procedures in terms of measures aimed at preventing the commission of offences provided for by the regulatory framework.

This programme of checks is subject to possible changes, based on requests that may be made by the Supervisory Body or in response to critical points that may emerge during the analysis of flows and notifications.

When it deems appropriate, the Supervisory Body may use the services of external professionals for investigating facts that may potentially be in breach of the Organisational Model, preventively informing the Chairman or the Managing Director.

The Supervisory Body of Poste Italiane, in compliance with the autonomy and reserved nature of the information regarding the various Companies in the Group and within the limits imposed by the law, may:

- draw up common guidelines regarding supervisory activities and any changes or additions to be made to the Organisational Models as a result of

new regulations/laws or in the light of changes in the interpretation of the law, communicating with the Supervisory Bodies of the Subsidiaries;

- coordinate activity relating to the study and development of themes pertinent to the Decree, its interpretation and its application within the Group;
- build up, with the support of the Internal Control Department and the Human Resources and Organisation Department, an archive for gathering together the Organisational Models of the Companies in the Group.

3.4 Reporting activity of the Supervisory Body

3.4.1 Reporting activity vis-à-vis the Corporate Bodies

(omissis)

3.4.2 Reporting with regard to regulations to combat money laundering

(omissis)

3.5 Information flows vis-à-vis the Supervisory Body

3.5.1 Notifications received from within the company or from third parties

Staff are obliged to inform the Supervisory Body of possible breaches of and/or conduct not in compliance with what is set out in the Organisational Model. The Internal Control Department, prepared to receive and to process such notifications, deals with governing the criteria for and the overall process of managing notifications in the pertinent Guidelines “Notifications and Communications to the 231 Supervisory Body 231 of Poste Italiane”.

When it deems that the facts notified should be investigated, the Supervisory Body uses the services of its Technical Secretariat.

3.5.2 Obligation to provide information regarding official acts

Official acts and reports regarding facts of any nature that may refer to the areas of offences referred to in Legislative Decree 231/01 must be punctually transmitted by the relevant company departments to the Supervisory Body, with the appropriate information being provided to the Managing Director and the Technical Secretariat, in accordance with the means defined in the Guidelines “Notifications and Communications to the 231 Supervisory Body 231 of Poste Italiane” referred to under § 3.5.1.

3.5.3 Proxy system

(omissis)

4. SELECTION AND TRAINING OF STAFF AND DISSEMINATION OF THE MODEL

4.1 Selection of staff

The Human Resources and Organisation Department creates a specific system for assessing staff at the selection stage, inspired by impartial criteria and taking account of the needs of the company in relation to the application of the Decree.

4.2 Training of staff and dissemination of the Model within the company

Training of staff for the purposes of the implementation of the Model and its dissemination within the company is dealt with by the Human Resources and Organisation Department. It is structured and organised by taking into account the various risk areas and the staff that operate therein.

(omissis)

4.3 Information provided to external co-workers, partners and suppliers

External subjects that entertain contractual relationships of any kind with the Company are informed that Poste Italiane is equipped with an Organisational Model and with specific procedures concerning Legislative Decree no. 231/2001, in addition to a Code of conduct addressed to Suppliers and Partners.

5. DISCIPLINARY SYSTEM

5.1 General principles

An essential aspect of the efficacy of the Model is the setting up of an adequate disciplinary system for breaches of the provisions of the Model and its internal procedures, for the purposes of preventing offences referred to in Decree no. 231/2001.

The application of disciplinary penalties is independent from the outcome of any criminal proceedings, since the rules of conduct imposed by the Model are assumed by Poste Italiane in full autonomy, regardless of the criminal consequences that may derive from such conduct.

5.2 Penalties for employees

(omissis)

5.3 Measures taken against Managers

(omissis)

6. OTHER SAFEGUARDS AGAINST FAILURE TO COMPLY WITH THE MODEL

6.1 Breach of the model on the part of Directors and Auditors

(omissis)

6.2 Measures taken against external subjects

A breach on the part of external Collaborators of the Company, of Shareholders of the Company and subsidiary entities of the Company, Suppliers of goods and services and Partners, of the regulations provided for in Legislative Decree 231/01 and/or the Code of conduct for Suppliers and Partners may constitute grounds for the cancellation of the contract. This eventuality is explicitly contained in each contract the Company is party to. Breaches must be reported without delay to the Managing Director by the person who has observed them. If the Managing Director believes the report to be founded, he shall give order for the contract to be cancelled forthwith, informing the Supervisory Body. The Managing Director shall also inform the Supervisory Body in the event s/he does not proceed to the cancellation of the contract because s/he believes the report to be unfounded, or because such a cancellation would be seriously damaging to the Company.

The cancellation of the contract requires an investigation into any damage the Company may have suffered as a result and the consequent compensatory action.

7. CODES OF CONDUCT

The Code of Ethics of Poste Italiane, distributed to all the Company's staff, sets out the guiding principles and main guidelines to which the activities and conduct of the Code's recipients must conform.

This Code is complemented by the adoption of:

- the Ethical Code of Bancoposta which, based on the law, regulations and other provisions of the Supervisory Authority, indicates the rules of conduct the administrative control bodies and all the staff of Poste Italiane must comply with, specifically with regard to the activities of Bancoposta;
- the Code of conduct for Suppliers and Partners, which, based on the law and on internal regulations, indicates the rules of conduct Suppliers and Partners must comply with, specifically with regard to the activities covered by the contract, as well as the system of penalties applicable in the event of a breach thereof.

The Codes of conduct, pursuant to Legislative Decree 231/01, implement the key principles of the Organisational Model through a system of rules aimed at preventing the commission of the offences provided for in said Decree.

These codes are to be referred to for all specific company policies and procedures governing activities potentially exposed to the risk of offences.