CARIBONI S.R.L.

Organisation and management model pursuant to Legislative Decree 231/2001

- GENERAL SECTION -

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1. DESCRIPTION OF THE REGULATORY FRAMEWORK

1.1. Introduction

Legislative Decree No. 231 of 8 June 2001 (hereinafter, "Legislative Decree 231/2001" or "Decree"), implementing the delegation conferred on the Government by Article 11 of Law No. 300 of 29 September 2000, sets forth the rules governing the "*criminal liability of entities*".

In particular, these rules apply to entities with legal personality and to Companies and associations, including those without legal personality.

Legislative Decree 231/2001 finds its primary genesis in certain international and EU conventions ratified by Italy that require forms of liability of collective entities for certain types of offences.

According to the regulations introduced by the Decree, in fact, Companies can be held "liable" for certain offences committed or attempted, even in the interest or to the advantage of the Companies themselves, by members of the company's senior management (or simply "senior managers") and by those who are subject to the management or supervision of the latter (Article 5(1) of Legislative Decree 231/2001).

On the other hand, the existence of an exclusive advantage for the natural person committing the offence (or for third parties) excludes the liability of the Company (Article 5(2) of the Decree), which is thus in a situation of absolute and manifest extraneousness to the offence committed.

Therefore, the criminal liability of Companies can be considered to be independent of the criminal liability of the natural person who has committed the offence (if anything, the Companies' liability is in addition to that of the natural person).

The Entity's liability, albeit mitigated, also arises if the Predicate Offence is in the form of an **attempt** (Article 26 of Legislative Decree No. 231/2001), i.e. when, pursuant to Article 56 of the Criminal Code, the agent "*performs suitable acts, unequivocally directed towards committing a* [predicate] *offence*" and *"the action does not take place or the event does not occur*".

This new type of liability, although defined as "administrative" by the legislator, is substantially comparable to criminal liability, since the criminal court is responsible for ascertaining the offences from which it derives, and the guarantees of criminal proceedings are also extended to the Entity.

The broadening of liability is essentially aimed at involving 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 commission of offences by directors and/or employees in the interest or to the advantage of the Company for which they work.

Legislative Decree No. 231/2001 innovates the Italian legal system in that both pecuniary and disqualification sanctions are now directly and independently applicable to Companies in relation to offences ascribed to persons functionally linked to the Company pursuant to Article 5 of the Decree.

Legislative Decree No. 231/2001, in order to be able to affirm the liability of the Entity, provides for a further requirement: the ascertainment of its negligence.

This last requirement is attributable to an "**organisational fault**", to be understood as the failure to adopt or comply with appropriate standards; in other words, this is the Entity's failure to adopt adequate anticipatory measures to prevent the commission of the Predicate Offences by the persons identified in the Decree.

The Company's criminal liability may be excluded if the Company has, *inter alia*, adopted and effectively implemented, prior to the commission of the offences, organisational, management and control models suitable for preventing the offences themselves; these models may be adopted on the basis of codes of conduct (Guidelines of the associations representing the Companies, including Confindustria, and communicated to the Ministry of Justice).

However, exemption is not determined by the mere adoption of the Model, since it must be able to prove that it has adopted and effectively implemented an organisation capable of preventing the commission of the Predicate Offences, through, precisely, the adoption of a Model that is suitable for the purpose.

1.2. Nature of liability

With reference to the nature of corporate criminal liability pursuant to Legislative Decree 231/2001, the Explanatory Memorandum of the decree, as anticipated, emphasises the "*birth of a third type* [of liability] *that combines the essential features of the criminal and administrative systems in an attempt to reconcile the reasons of effectiveness in terms of prevention with those, even more inescapable, of utmost guarantee*". Legislative Decree 231/2001 has in fact introduced into our system a form of "administrative" liability for companies - in accordance with the provisions of Article 27, paragraph 1 of our Constitution - but with numerous points of contact with "criminal" liability.

In this sense, see - among the most significant - Articles 2, 8 and 34 of Legislative Decree 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 responsible for the criminal conduct; the third provides for the circumstance that such liability, dependent on the commission of an offence, is ascertained in 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: senior management and persons subject to the direction of others

As mentioned above, according to Legislative Decree 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 by persons who exercise, also *de facto*, the management and control of the entity itself" (the aforementioned persons "in senior management" or "top managers"; Article 5(1)(a) of Legislative Decree No. 231/2001);
- by persons subject to the direction or supervision of one of the senior managers (so-called subordinates; Article 5(1)(b) of Legislative Decree 231/2001) .[1]

It should also be reiterated that the Company is not liable, by express legislative provision (Article 5(2) of Legislative Decree No. 231/2001), if the above-mentioned persons have acted exclusively in their own interest or in the interest of third parties.

[1] Assonime Circular No. 68 of 19 November 2002 specifies that it is not necessary for subordinates to have an employment relationship with the entity, since this notion also includes 'those workers who, although not being "employees" of the entity, have a relationship with it such as to entail a supervisory obligation on the part of the management of the entity itself.so-called para-subordinates in general, distributors, suppliers, consultants, collaborators".

1.4. Offences

Pursuant to Legislative Decree No. 231/2001, the entity can only be held liable for the specific offences expressly referred to in Legislative Decree No. 231/2001, if committed in its interest or to its advantage by the persons qualified under Article 5(1) of the Decree itself or in the case of specific legal provisions referring to the Decree, as in the case of Article 10 of Law No. 146/2006.

For the sake of ease of exposition, these offences can be grouped in the following categories:

- **offences against the Public Administration**. This is the first group of offences originally identified by Legislative Decree 231/2001 (Articles 24 and 25)[1];
- **forgery of money, other legal tender, revenue stamps and identification instruments or signs**, such as forgery of money, other legal tender and revenue stamps, provided for by Article *25-bis* of the Decree and introduced by Law No. 409 of 23 November 2001, concerning "*Urgent provisions in view of the introduction of the Euro*"[2];
- **corporate crimes**. Legislative Decree No. 61 of 11 April 2002, as part of the reform of corporate law, provided for the extension of the criminal liability regime applicable to entities to certain corporate crimes (such as false corporate communications, undue influence on the shareholders' meeting, referred to in Article *25-ter* of Legislative Decree 231/2001) [3];
- **offences relating to terrorism and subversion of the democratic order** (referred to in Article *25-quater* of Legislative Decree No. 231/2001, introduced by Article 3 of Law No. 7 of 14 January 2003). These are "*offences for the purpose of terrorism or subversion of the democratic order, provided for in the Criminal Code and in special laws*", as well as offences, other than those indicated 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, New York, 9 December 1999")[4];

- **market abuse**, referred to in Article 25-*sexies* of the Decree, as introduced by Article 9 of Law No. 62 of 18 April 2005 ("*2004 EU Law*")[5];
- **offences against the individual**, provided for in Article 25-*quinquies*, introduced into the Decree by Article 5 of Law No. 228 of 11 August 2003, such as child prostitution, child pornography, trafficking in persons and reduction to and maintenance in slavery[6];
- **transnational offences**. Article 10 of Law No. 146 of 16 March 2006 provides for the criminal liability of the Company also with reference to the offences specified by the same law that have the characteristic of transnationality[7];
- **offences against life and limb**. the Decree also includes the practice of mutilation of female genital organs among the offences giving rise to the criminal liability of the Company;
- **health and safety offences**. Article 25-*septies*[8] provides for the Company's criminal liability in relation to the offences referred to in Article 589 and Article 590, third paragraph, of the Criminal Code (Manslaughter 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;
- **offences of receiving stolen goods, money laundering and use of money, goods or benefits of unlawful origin, as well as self-laundering**. Article 25-*octies*[9] of the Decree provides for the extension of the liability of the entity also with reference to the offences provided for in Articles 648, 648-*bis*, 648-*ter* and 648 - *ter* 1 of the Criminal Code;
- **computer crimes and unlawful data processing**. Article 24-*bis* of the Decree provides for the criminal liability of the Company in relation to the offences referred to in Articles 615-*ter*, 617-*quater*, 617-*quinquies*, 635-*bis*, 635-*ter*, 635-*quater* and 635-*quinquies* of the Criminal Code;

- **organised crime offences**. Article 24-*ter* of the Decree provides for the extension of the entity's liability also with reference to the offences described in Articles 416, sixth paragraph, 416-*bis*, 416-*ter* and 630 of the Criminal Code and the offences provided for in Article 74 of the Consolidated Law referred to in the President of the Republic Decree No. 309 of 9 October 1990;
- **offences against industry and trade**. Article 25-*bis-1* of the Decree provides for the criminal 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 Criminal Code;
- **copyright offences**. Article 25-*novies* of the Decree provides for the Company's criminal liability in relation to the offences referred to in Articles 171, first paragraph, letter a-bis), and third paragraph, 171-*bis*, 171-*ter* and 171-septies, 171-*octies* of Law No. 633 of 22 April 1941;
- **inducement not to make statements or to make false statements to the Judicial Authorities** (Article 377-*bis* of the Criminal Code), referred to in Article 25-*decies* of the Decree[10];
- **environmental offences.** Article 25-*undecies* of the Decree provides for the Company's criminal liability in relation to the offences referred to in Articles 452-*bis*, 452-*quater*, 452-*quinquies*, 452-*sexies*, 452-*octies*, 727-*bis* and 733-*bis* of the Criminal Code (in particular, non-minor environmental offences, including pollution and environmental disaster), some articles of Legislative Decree 152/2006 (Consolidated Environmental Law), some articles of Law No. 150/1992 on the protection of endangered and dangerous animal and plant species and dangerous animals, Article 3(6) of Law No. 549/1993 on the protection of stratospheric ozone and the environment, and some articles of Legislative Decree 202/2007 on pollution caused by ships [11];
- **offences relating to the employment of illegally staying third-country nationals**. Article 25-*duodecies* of the Decree provides for the criminal liability of the Company in relation to the offences of Article 2(1) of Legislative Decree

No. 109 of 16 July 2012 in the case of the use of foreign workers without a residence permit or even an expired permit;

- **offences of corruption between private individuals**. Article 25-*ter*(1)(*s-bis*) of the Decree provides for the criminal liability of the Company in relation to offences under Article 2635 of the Civil Code;
- **offences of solicitation of minors**. Article 25-*quinquies*(1)(c) of the Decree provides for the Company's criminal liability in relation to Article 3 of Legislative Decree No. 39 of 4.3.2014 of the new case of Article 609 *undecies* of the Criminal Code;
- **crimes of racism and xenophobia.** Article 25-*terdecies* provides for the Company's criminal liability in relation to offences under Article 604-*bis* of the Criminal Code (Propaganda and incitement to commit offences for reasons of racial, ethnic and religious discrimination)[12];
- **offences for entities operating in the virgin olive oil supply chain**. Article 12, Law No. 9/2013 made the following offences applicable to those operating in the virgin olive oil supply chain: use of adulterated and counterfeit food substances (Article 440 of the Criminal Code), trade in counterfeit or adulterated food substances (Article 442 of the Criminal Code), trade in harmful food substances (Article 444 of the Criminal Code); counterfeiting, alteration or use of distinctive signs of intellectual or industrial products (Article 473 of the Criminal Code); introduction into the State and trade in products with false signs (Article 474 of the Criminal Code); fraud in the exercise of trade (Article 515 of the Criminal Code); sale of foodstuffs that are not genuine as genuine (Article 516 of the Criminal Code); sale of industrial products with false signs (Article 517 of the Criminal Code); counterfeiting of geographical indications and designations of origin of agri-food products (Article 517-*quater* of the Criminal Code);
- **fraud in sporting competitions, unlawful gaming or betting and gambling by means of prohibited devices[13]**. Article 25-*quaterdecies* provides for the

Company's criminal liability in relation to the following offences: sports fraud (Article 1, L. 401/1989) and crimes and offences related to the exercise, organisation, sale of gaming and betting activities in violation of authorisations or administrative concessions (Article 4, L. 401/1989);

- **tax offences**, referred to in Article 25-*quinquiesdecies*, including several offences of Legislative Decree 74/2000, such as: fraudulent tax return using invoices or other documents for non-existent transactions, fraudulent tax return using other means, false tax return, issuance of invoices or other documents for non-existent transactions, undue offsetting, concealment or destruction of accounting documents, omitted tax return, fraudulent evasion of tax payments;
- **fraud and counterfeiting of non-cash means of payment**, Article 25-*octies*.1, entitled "Offences relating to means of payment other than cash", provides for the Company's criminal liability in relation to offences of undue use and falsification of credit and payment cards (Article 493-*ter* of the Criminal Code), possession and dissemination of equipment, devices or computer programmes aimed at committing offences relating to means of payment other than cash (Article 493-*quater* of the Criminal Code), computer fraud (Article 640-*ter* of the Criminal Code) and the commission of any other offence against public trust, against property or which in any case offends property provided for by the Criminal Code, when it relates to non-cash payment instruments (Article 25-*octies.*1(2));
- **offences against the cultural heritage**, Law No. 22 of 9 March 2022, "Provisions on offences against the cultural heritage", introduced Article 25-*septiesdecies* entitled "offences against the cultural heritage", including the following offences of the Criminal Code: misappropriation of cultural heritage (Article 518-*ter*), unlawful importation of cultural heritage (Article 518-*decies*), unlawful exportation of cultural heritage (Article 518-*undecies*), destruction, dispersal, deterioration, defacement, smearing and unlawful use of cultural or landscape heritage (Article 518-*duodecies*), counterfeiting of works of art

(Article 518-*quaterdecies*), theft of cultural heritage (Article 518-*bis*), receiving stolen cultural heritage (Art. 518-*quater*), forgery of private deeds relating to cultural heritage (Art. 518-*octies*);

- **laundering of cultural heritage and devastation**, Law No. 22 of 9 March 2022, "Provisions on offences against cultural heritage", introduced Article 25-*duodevicies* entitled "Laundering of cultural heritage and devastation and looting of cultural and landscape heritage", including the following offences of the Criminal Code: laundering of cultural heritage (Article 518-*sexies*), and devastation and looting of cultural and landscape heritage (Article 518-*terdecies*):

The categories listed above are likely to increase further in the near future, also due to the legislator's tendency to broaden the scope of the Decree, also in compliance with international and EU obligations.

1.5. Sanction system

Articles 9-23 of Legislative Decree 231/2001 provide for the following sanctions against the Company, as a consequence of the commission or attempted commission of the offences mentioned above:

- fine (and precautionary seizure in interim proceedings);
- disqualification sanctions (also applicable as an interim measure)
- confiscation;
- publication of the judgment.

The **fine**, governed by Articles 10 et seq. of the Decree, constitutes the "basic" sanction, necessarily applied, which the Entity shall pay with its assets or the common fund.

The fine 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 1,549.37. In the determination of the amount of the fine, the judge determines:

- the number of quotas, taking into account the seriousness of the event, the degree of the Company's liability and the activity carried out to eliminate or mitigate the consequences of the event and to prevent the commission of further offences;
- the amount of the individual quota, based on the economic and financial conditions of the Company.

Article 12 of Legislative Decree No. 231/2001 provides for a number of cases in which the fine is reduced. They are schematically summarised in the following table, indicating the reduction made and the prerequisites for its application.

Reduction	Prerequisites
1/2 (and may not in any case exceed Euro 103,291.00)	The perpetrator committed the offence predominantly in its own interest (or of third parties) *and* the Entity did not gain an advantage or gained a minimal advantage; *or*

	the financial damage caused is very minor
1/3 to 1/2	[Before the opening of the first instance trial hearing]. The Entity has fully compensated the damage and eliminated the harmful or dangerous consequences of the offence, or has in any case taken effective action to that effect; *or* an organisational model suitable for preventing offences of the kind that have occurred has been implemented and made operational
1/2 to 2/3	[Before the opening of the first instance trial hearing]. The Entity has fully compensated the damage and eliminated the harmful or

	dangerous consequences of the offence, or has in any case taken effective steps to do so; *and* an organisational model suitable for preventing offences of the kind that have occurred has been implemented and made operational

Disqualification sanctions have a duration of no less than three months and no more than two years (with the clarification that, pursuant to Article 14(1) of Legislative Decree No. 231/2001, "*Disqualification sanctions are aimed at the specific activity to which the offence of the entity refers*") and may consist of

a) disqualification from carrying out business;
b) suspension or revocation of authorisations, licences or concessions functional to the commission of the offence;
c) prohibition on contracting with the public administration, except to obtain public services (confiscation and preventive seizure as a precautionary measure);
d) publication of the judgment (in cases of application of a disqualification sanction).

They apply only in relation to offences for which they are expressly provided for (i.e. offences against public administration, certain offences against public trust - such as

counterfeiting money - offences relating to terrorism and subversion of the democratic order, offences against the individual, female genital mutilation practices, transnational offences, health and safety offences as well as offences relating to receiving, laundering and using money, goods or benefits of unlawful origin, computer crimes and unlawful processing of data, organised crime offences, offences against industry and trade, copyright offences, certain environmental offences, offences relating to the employment of illegally staying third-country nationals, undue inducement to give or promise benefits, tax offences and smuggling, offences relating to non-cash means of payment, offences against cultural heritage and laundering of cultural heritage, and the devastation and looting of cultural and landscape heritage) and provided that at least one of the following conditions is met:

- the Company derived a significant profit from the commission of the offence and the offence was committed by persons in senior management or by persons subject to the direction of others when, in the latter case, the commission of the offence was determined or facilitated by serious organisational deficiencies;
- in the event of repeated offences[2] [14].

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

The sanctions of disqualification from carrying out 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 [15]. We also

[2] Pursuant to Article 20 of Legislative Decree No. 231/2001, "The offence is deemed repeated when the entity, already definitively convicted at least once for an offence, commits another offence within five years following the final conviction'.

note the possible continuation of the Company's activity (instead of the imposition of the sanction) by an administrator appointed by the judge pursuant to and under the conditions of Article 15 of Legislative Decree No. 231/2001[16].

In any case, disqualification sanctions shall not be applied where the offence was committed in the predominant interest of the perpetrator or of third parties and the Entity obtained little or no advantage from it, or where the financial damage caused is very minor.

The application of the disqualification sanctions is also excluded by the fact that the Entity has carried out the remedial conduct provided for in Article 17 of Legislative Decree No. 231/2001 and, more specifically, when the following conditions are met:

- "*the entity has fully compensated the damage and has eliminated the harmful or dangerous consequences of the offence or has in any event taken effective steps to do so*";
- "*the entity has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models capable of preventing offences of the kind committed*";
- "*the entity has made available the profit made for the purposes of confiscation*".

The choice of the measure to be applied and its duration is made on the basis of the criteria previously indicated for the commensuration of the fine "*taking into account the suitability of the individual sanctions to prevent offences of the type committed*" (Article 14 of Legislative Decree 231/2001).

The legislator then specified that the disqualification from carrying out business is of a residual nature in relation to the other disqualification sanctions

The **confiscation** from the Entity of the price and profit of the offence is the main and obligatory sanction.

Article 6(5) of Legislative Decree No. 231/2001 provides that "*The confiscation of the profit that the Entity has derived from the offence is in any case ordered,* ***also in the form of confiscation of an equivalent value***": if the commission of the predicate offence by the natural person is ascertained, therefore, the Entity may be subject to confiscation of the illegal profit even in the absence of "organisational fault".

Art. 19, Legislative Decree 231/2001 also provides that "*The confiscation of the price or profit of the offence is always ordered against the entity upon conviction, except for the part that can be returned to the damaged party. The rights acquired by third parties in good faith are not affected. When it is not possible to execute the confiscation pursuant to paragraph 1, the confiscation may concern sums of money, goods or other utilities with a value equivalent to the price or profit of the offence.*".

Pursuant to Article 15(4) of Legislative Decree No. 231/2001, "*the profit derived from the continuation of the activity is confiscated*".

The publication of the conviction judgment in one or more newspapers, either in excerpts or in full, may be ordered by the Judge, together with posting in the municipality where the Entity has its head office, when a disqualification sanction is applied. Publication is carried out by the Clerk of the competent Judge and at the expense of the Entity.

In the event that the Predicate Offences sanctioned under Legislative Decree No. 231/2001 are committed in the form of attempt, the fines (in terms of amount) and the disqualification sanctions (in terms of duration) are reduced by one third to one half.

The imposition of sanctions is excluded in cases where the entity voluntarily prevents the performance of the action or the realisation of the event (Article 26 of Legislative Decree No. 231/2001).

1.6. Changes in the entity

Legislative Decree 231/2001 regulates the regime of the entity's financial liability also in relation to changes in the entity itself, such as the change of company type, merger, demerger and transfer of business.

According to Article 27(1) of Legislative Decree No. 231/2001, the entity is liable for the obligation to pay the fine with its assets or with the common fund, where the notion of assets must be referred to companies and bodies with legal personality, while the notion of "common fund" concerns unrecognised associations.

Articles 28-33 of Legislative Decree No. 231/2001 regulate the impact on the liability of the entity of changes connected to transactions involving change of company type, merger, demerger and transfer of business. The legislator has taken into account two opposing requirements:

- on the one hand, to prevent such transactions from constituting a means of easily evading the entity's criminal liability;
- on the other hand, not to penalise reorganisation measures without intent of evasion.

The Explanatory Memorandum to Legislative Decree No. 231/2001 states: "*The general criterion followed in this respect was to regulate the fate of fines 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 disqualification sanctions with the branch of activity in the context of which the offence was committed*".

In the event of a change of company type, Article 28 of Legislative Decree No. 231/2001 provides (consistently with the nature of this transaction, which implies a mere change in the company type, without determining the extinction of the original legal entity) that the entity's liability for offences committed prior to the date on which the change of company type took effect remains unaffected.

In the event of a merger, the entity resulting from the merger (including by absorption) is liable for the offences for which the entities involved in the merger were liable (Article 29 of Legislative Decree 231/2001).

Article 30 of Legislative Decree 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 fines 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 limit does not apply to beneficiary companies to which the branch of activity in the context of which the offence was committed has been transferred, even in part.

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

Article 31 of the Decree lays down provisions common to mergers and demergers, concerning the determination of sanctions in the event that such extraordinary transactions have taken place before the conclusion of the proceedings. In particular, it clarifies the principle that the judge must commensurate the fine, in accordance with the criteria laid down in Article 11(2)[18] of the Decree, making reference in any event to the economic and financial conditions of the entity originally liable, and not to those of the entity to which the fine should be imputed following the merger or demerger.

In the event of a disqualification sanction, the entity that will be liable following the merger or demerger may ask the court to convert the disqualification sanction into a fine, provided that

- the organisational fault that made the commission of the offence possible has been eliminated;
- the entity has compensated the damage and made available (for confiscation) the part of the profit that may have been made. Article 32 of Legislative Decree No. 231/2001 allows the judge to take into account convictions already handed down against the entities involved in the merger or the demerged entity in order to establish a repeated offence, pursuant to Article 20 of Legislative Decree No. 231/2001, in relation to the offences of the entity resulting from the merger or the beneficiary of the demerger relating to offences subsequently committed.

A single set of rules (Article 33 of Legislative Decree No. 231/2001) is laid down for the cases of sale and contribution of a business; the transferee, in the event of the transfer of the business in whose activity the offence was committed, is jointly and severally liable to pay the fine imposed on the transferor, with the following limitations:

- the benefit of the prior enforcement against the transferor;

- the transferee's liability is limited to the value of the business transferred and the fines resulting from the statutory accounting books or due for administrative offences of which it had knowledge.

On the contrary, disqualification sanctions imposed on the transferor do not extend to the transferee.

1.7. Offences committed abroad

According to Article 4 of Legislative Decree 231/2001, the entity may be held liable in Italy in relation to offences - covered by the same Legislative Decree 231/2001 - committed abroad.

The Explanatory Memorandum to Legislative Decree 231/2001 emphasises the need not to leave a frequently occurring criminal situation without a sanction, also in order to avoid easy circumvention of the entire regulatory framework in question.

The prerequisites on which the liability of the entity for offences committed abroad is based are:

- the offence must be committed by a person functionally linked to the entity, pursuant to Article 5(1) of Legislative Decree No. 231/2001;
- the entity must have its head office in the territory of Italy;
- the entity can only be held liable in the cases and under the conditions provided for in Articles 7, 8, 9 and 10 of the Criminal Code (in cases where the law provides that the perpetrator (natural person) found guilty 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 entity itself) and, also in accordance with the principle of legality set out in Article 2 of Legislative Decree 231/2001,

only in respect of offences for which its liability is provided for by a specific legislative provision;

- if the cases and conditions provided for in the aforementioned articles of the Criminal Code are met, the State of the place where the act was committed does not prosecute the entity.

These rules concern offences committed entirely abroad by Senior Management or Subordinates.

For criminal conduct that has taken place even in part in Italy, the principle of territoriality applies pursuant to Article 6 of the Criminal Code, which states that: "*the offence shall be deemed to have been committed on the territory of the State when the act or omission constituting the offence has wholly or partly taken place there, or when the event which is the consequence of the act or omission has occurred there*".

1.8. Proceedings for ascertainment of the offence

Corporate criminal liability is established in criminal proceedings.

In this regard, Article 36 of Legislative Decree No. 231/2001 provides*: "The criminal court having jurisdiction for the offences on which the corporate criminal liability depends has jurisdiction also on the entity's liability. The provisions on the composition of the court and the related procedural provisions relating to the offences on which the corporate criminal liability depends shall be observed for the proceedings to determine the entity's liability"*.

Another rule, inspired by reasons of effectiveness, homogeneity and procedural economy, is that of the mandatory joinder of proceedings: the proceedings against the entity must remain joined, as far as possible, to the criminal proceedings against

the natural person who committed the offence underlying the entity's liability (Article 38 of Legislative Decree No. 231/2001). This rule is counterbalanced by the wording of the same Article 38 which, in paragraph 2, regulates the cases in which the corporate criminal liability is prosecuted separately.

The entity takes part in the criminal proceedings with its legal representative, unless the latter is charged with the offence on which the corporate criminal liability depends; when the legal representative does not appear, the entity is represented by its defence counsel (Article 39(1) and (4) of Legislative Decree 231/2001).

1.9. Exempting Value of Organisational, Management and Control Models

A fundamental aspect of Legislative Decree 231/2001 is the attribution of an exempting value to the Company's organisation, management and control models.

If the offence has been committed by a person in senior management, in fact, the Company is not liable if it proves that (Article 6(1) of Legislative Decree 231/2001):

- the management body has adopted and effectively implemented, prior to the commission of the offence, organisational and management models capable of preventing offences of the kind committed;
- the duty of supervising the operation of and compliance with the Models and ensuring that they are updated has been entrusted to a body of the Company endowed with autonomous powers of initiative and control;
- the persons committed the offence by fraudulently circumventing the organisation and management models;
- there was no omission or insufficient supervision by the Supervisory Body.

In essence, the company charged under Legislative Decree 231/2001 for a predicate offence committed by the senior manager must **jointly prove** the following four elements: (i) adoption and effective implementation of an organisational model (ii)

appointment of a Supervisory Body (iii) lack of control failures by this body (iv) fraudulent evasion of the system of prevention of corporate criminal liability by senior management.

In the event of an offence committed by senior managers, there is, therefore, a presumption of liability on the part of the Company due to the fact that such persons express and represent the policy and, therefore, the will of the entity itself. This presumption, however, can be overcome if the Company succeeds in demonstrating its extraneousness to the facts alleged against the senior manager 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".

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 offence was made possible by the violation of the management or supervision obligations with which the Company is required to comply.

In any case, the violation of management or supervisory obligations is excluded if the Company, before the offence was committed, adopted and effectively implemented an Organisation, Management and Control Model suitable for preventing offences of the kind committed.

In the case of an offence committed by a person subject to the direction or supervision of a senior manager, there is an inversion of the burden of proof. The prosecution must, in the hypothesis envisaged by the aforementioned Article 7, prove the failure to adopt and effectively implement an Organisation, Management and Control Model capable of preventing offences of the kind committed.

Legislative Decree 231/2001 outlines the content of organisation and management models, providing that they must, in relation to the extent of delegated powers and the risk of offences being committed, as specified in Article 6(2):

- 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 vis-à-vis the Body responsible for 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.

Article 7(4) of Legislative Decree 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 prescriptions are discovered or when changes occur in the organisation and activity;
- a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the Model.

1.10. Codes of Conduct (Guidelines)

Article 6(3) of 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".

The preparation of the Model is also inspired by Confindustria's "*Guidelines for the preparation of Organisation, Management and Control Models*".

With the above-mentioned Guidelines, Confindustria intervened by providing methodological indications for the identification of risk areas (sectors/activities in which offences may be committed), the design of a control system (the so-called protocols for training planning and implementation of the entity's decisions) and the contents of the Organisation, Management and Control Model.

In particular, the Confindustria Guidelines suggest that member companies use risk assessment and risk management processes and envisage the following steps for defining the Model:

- identification of risks and protocols;
- adoption of some general instruments, the main ones being a Company Code of Conduct and Ethics with reference to offences under Legislative Decree 231/2001 and a disciplinary system;
- Identification of the criteria for the selection of the Supervisory Body, indication of its requirements, duties and powers, and information obligations;
- information and training of personnel;
- monitoring systems (in particular for non-intentional safety and environmental offences).

According to the Confindustria Guidelines, the control system must be inspired by the following principles:

- verifiability, documentability, consistency and congruence of each operation;
- application of the principle of separation of functions (no one can manage an entire process independently);
- documentation of controls;
- provision of an adequate system of sanctions for violating the provisions of the Code of Ethics and the procedures laid down in the model;
- identification of the requirements of the Supervisory Body, which can be summarised as follows:
  - autonomy and independence;
  - professionalism;
  - continuity of action.
- Information obligations of the control body.

The Guidelines specify that the above-mentioned components are certainly relevant to the efficiency of the internal control system; however, it is emphasised that each Entity has its own peculiarities and therefore each Model must be "tailor-made"[3] .

The Confindustria Guidelines were transmitted, before their dissemination, to the Ministry of Justice, pursuant to Article 6, paragraph 3, of Legislative Decree No. 231/2001, so that the latter could express its observations within thirty days, as provided for by Article 6, paragraph 3, of Legislative Decree No. 231/2001, mentioned above.

The latest version was published in June 2021 (with approval by the Ministry of Justice on 8 June 2021).

[3] The Introduction to the "GUIDELINES FOR THE CONSTRUCTION OF ORGANISATION, MANAGEMENT AND CONTROL MODELS" reads as follows: "The model must not represent a bureaucratic fulfilment, a mere appearance of organisation. It must live in the company, adhere to the characteristics of its organisation, evolve and change with it".

The Company has adopted its Organisation, Management and Control Model on the basis of the Guidelines drawn up by the main trade associations and, in particular, the Confindustria Guidelines.

1.11. Suitability assessment

The ascertainment of the liability of the Company, which is attributed to the criminal court, takes place by means of:

- verification of the existence of the predicate offence for which the Company is liable;
- the assessment of the suitability of the organisational models adopted.

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

The suitability assessment must be made according to an essentially *ex ante* criterion whereby the judge places himself, ideally, in the company's situation at the time when the offence occurred in order to test the congruity of the Model adopted. In other words, the organisational Model which, prior to the commission of the offence, could and should be deemed "suitable to prevent offences" should be assessed to be such as to eliminate or, at least, minimise, with reasonable certainty, the risk of the offence subsequently being committed.

2. THIS MODEL - DESCRIPTION OF THE COMPANY, ELEMENTS OF THE GOVERNANCE MODEL AND THE GENERAL ORGANISATIONAL STRUCTURE OF THE COMPANY

2.1. CARIBONI S.r.l.'s activity

CARIBONI S.r.l. (hereinafter, in short, the "**Company**") is a limited liability company under Italian law - incorporated on 14.10.2010 and registered in the ordinary section of the Companies' Register of Milano Monza Brianza Lodi on 20.10.2020 - engaged in the field of manufacturing of hydraulic equipment mainly for the nautical sector.

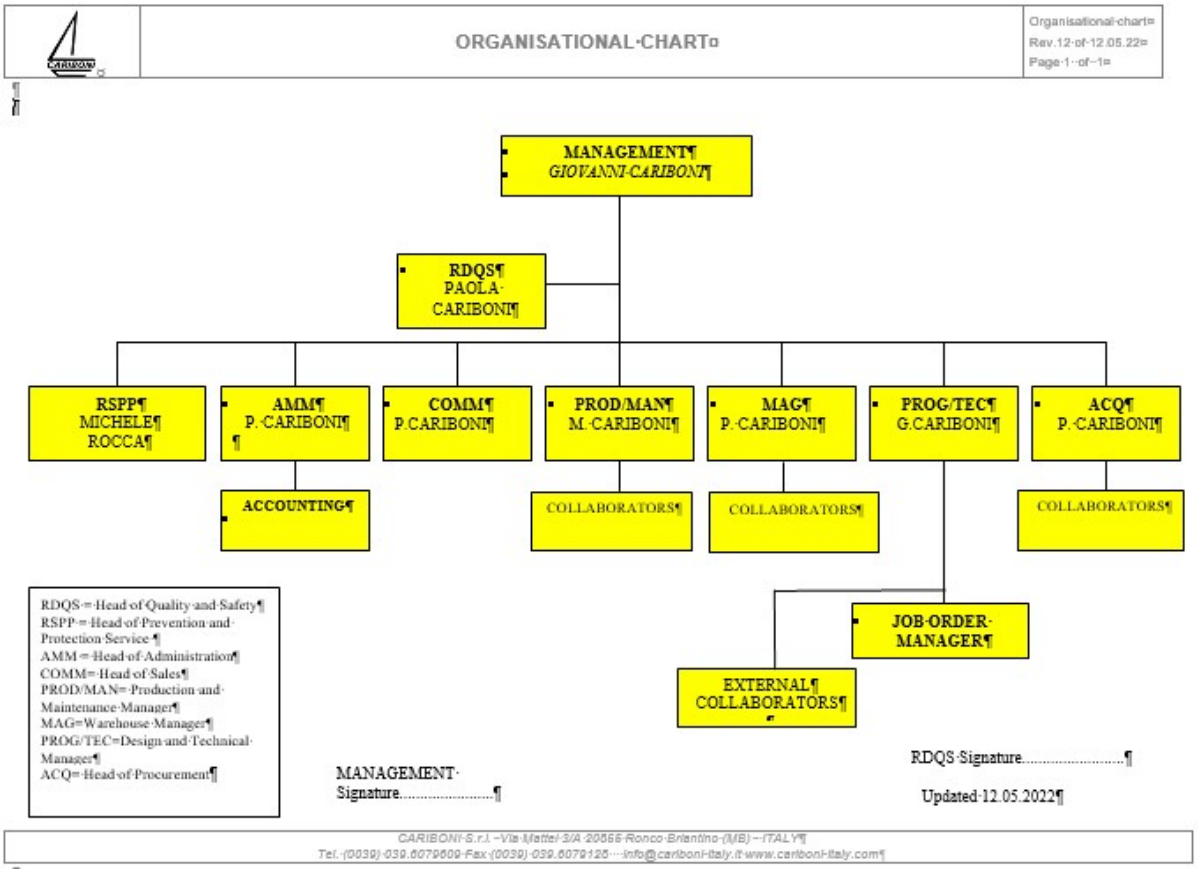
2.2. Governance model

CARIBONI S.r.l. adopts a Corporate Governance system, understood as the system of "sound management" rules through which the Company is managed and controlled in compliance with the provisions of the law and the Confindustria Guidelines.
These rules were adopted consistently with the structure, size and organisation of the Company, ensuring high standards of information transparency and security in all processes.

The Company's legal representative is the Chairman of the Board of Directors, a position currently held by Mr. Giovanni Cariboni, who holds all powers of ordinary and extraordinary management.

2.3. Organisation model

The company has the following Organisational Model as shown in the organisational chart:



2.4. Code of Ethics

The newly adopted Code of Ethics will be given to each employee upon hiring, with the title "Code of Ethics and Code of Conduct". This document is aimed at establishing an ethical framework to influence every decision made, both individually and collectively, within the global organisation.

The Code outlines the fundamental principles that all employees are expected to follow to guide their behaviour in all areas of activity.

Compliance with the provisions of the Code of Ethics and Business Conduct is a direct obligation arising from the employment contract.

3. THIS ORGANISATION, MANAGEMENT AND CONTROL MODEL - METHODOLOGY FOLLOWED FOR ITS PREPARATION

3.1. Foreword

The adoption of an Organisational, Management and Control Model in accordance with Legislative Decree 231/2001 not only serves as a mechanism to exempt the company from liability for the offences specified in the Decree, but also represents a commitment to social responsibility. This approach benefits both the company itself and its employees.

CARIBONI S.r.l. is convinced that the adoption of the Model, despite its optional nature, constitutes not only a valid tool for raising the awareness of all those who work for it (so that they behave correctly in the performance of their activities) but also an indispensable means of prevention against the risk of offences being committed.

The Company is in fact aware that the adoption and effective implementation of the Model not only allow it to benefit from the exemption provided for by Legislative Decree 231/2001, but also improves, within the limits provided for therein, its ability to manage company processes, limiting the risk of offences being committed.

The recipients of this Organisational, Management and Control Model pursuant to Legislative Decree 231/2001 of CARIBONI S.r.l., who undertake to comply with its contents, are those indicated as Recipients in the Code of Ethics.

The introduction of a system to control entrepreneurial action, together with the establishment and dissemination of ethical principles, improving the already high standards of conduct adopted by the Company fulfil a regulatory function insofar as 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 and standards of conduct.

The Company, therefore, intended to initiate a series of activities (hereinafter, the "Project") aimed at making its Organisational Model compliant with the requirements of Legislative Decree 231/2001 and consistent with both the principles already rooted in its governance culture and the indications contained in the Confindustria Guidelines.

3.2. The Project for the definition of its Organisation, Management and Control Model pursuant to Legislative Decree 231/2001

With reference to the issues identified by the legislator in the Decree and the indications contained in the reference Guidelines, the fundamental points developed in the definition of the Model can be briefly summarised as follows:

- detailed mapping of the 'sensitive' company activities, i.e. those within the scope of which, by their nature, the offences referred to in the Decree may be committed and therefore to be subject to analysis and monitoring (hereinafter, in short, cumulatively referred to as the "**Offence Risk Areas**")[4];
- evaluation of the company's system of preventive controls against the commission of offences and, if necessary, definition or adjustment of the measures envisaged.

For the purposes of preparing the Model, therefore, the following steps were taken:

[4] As mandated, this Analysis focused only on Occupational Health and Safety Risks.

- identifying the so-called sensitive activities, through a preliminary examination of the company context, by analysing company documentation (organisational charts, power of attorneys, job descriptions, organisational instructions and communications) and a series of interviews with the persons in charge of the various sectors of company operations, and coordinators of functions.
- The analysis was aimed at identifying and assessing the concrete performance of activities in which unlawful conduct at risk of committing the predicate offences could occur.

At the same time, the following further activities were carried out:

a) assessing the control measures, including preventive ones, in place and any critical points for subsequent improvement;
b) define and implement the actions necessary for the improvement of the control system and its adaptation to the purposes pursued by the Decree, as well as the fundamental principles of the separation of duties, and the definition of authorisation powers consistent with the assigned responsibilities.

We then proceeded to carry out a review and assessment of the effectiveness of the organisation, management and control systems existing and used within CARIBONI S.r.l. in order to codify - where necessary - in written documents the current company practices, aimed at preventing unlawful conduct identified by Legislative Decree 231/2001.

Among the Offence Risk Areas identified, CARIBONI S.r.l. adopts this OMM 231, which focuses on the area of occupational safety.

3.3. Aims and objectives of the Model

The purpose of the Model is to implement an organic system that prevents the commission of crimes and offences with the aim of determining in all those who work in the name of, on behalf of or in the interest of the Entity the awareness that they may incur, in the event of misconduct, appropriate company sanctions or the termination of the contractual relationship, as well as, obviously, criminal and administrative sanctions.

In particular, through the adoption of the Model, the Entity aims to pursue the following main purposes:

- make all those who work on behalf of the Entity in "areas of activity at risk" (understood as activities in the context of which the offences provided for by the Decree may be committed) aware that they may incur, in the event of violation of the provisions set out therein, disciplinary and/or contractual consequences as well as criminal and administrative sanctions that may be imposed on them, and also on CARIBONI S.r.l;
- reiterate that such forms of unlawful conduct are strongly condemned by CARIBONI S.r.l. since they are in any case contrary not only to the provisions of the law, but also to the ethical principles to which CARIBONI S.r.l. intends to adhere in the conduct of its business;
- enable, thanks to constant control and careful supervision/monitoring of the areas of activity at risk, to intervene promptly to prevent or counteract the commission of offences and to sanction any conduct contrary to the Model;
- increase the value of the Company by enhancing its image, Governance and acting as a protection of its value.

In a nutshell, pursuant to Article 6(2) of Legislative Decree 231/2001, an Organisation, Management and Control Model must meet the following requirements:

- identify the activities within the scope of which offences may be committed;

- provide for specific control protocols aimed at planning the formation and implementation of the entity'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 vis-à-vis the body responsible for 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.

By adopting and effectively implementing this Model, CARIBONI S.r.l. intends to comply with the general principles of an adequate internal control system, and in particular:

- the verifiability and documentability of every operation relevant for the purposes of Legislative Decree 231/2001;
- compliance with the principle of separation of functions;
- the definition of authorisation powers consistent with the assigned responsibilities;
- the regulation of activities and controls within the framework of company procedures.

In addition, when implementing the control system, while dutifully carrying out a general control of the company's activities, the priority arising from the significance of the sensitive areas and the likelihood of offences being committed is taken into account. The prevention system must be such that it cannot be circumvented except fraudulently and, as far as non-intentional offences are concerned, is not seriously deficient.

3.4. The concept of acceptable risk

In light of the above considerations, the Company has developed a Model that, based on the directives outlined in the Confindustria Guidelines, takes into account its specific characteristics. This Model was conceived consistently with the corporate governance system, with the aim of enhancing the pre-existing controls and bodies.

The principle adopted for the construction of the control system is the so-called "**acceptable risk principle**". This principle identifies a conceptual threshold of acceptability represented by a prevention system structured in such a way that it cannot be circumvented except by fraudulent acts.

3.5. Structures and elements forming the Model

The Model, as approved by the Company's Board of Directors, is composed by the following elements:

- process of identifying the company activities in the scope of which the offences referred to in Legislative Decree 231/2001 may be committed;
- provision of control *protocols (or standards)* in relation to the sensitive activity for which the Company has decided to adopt the OMM;
- process of identifying the methods of managing financial resources suitable for preventing the commission of offences;
- Supervisory body;
- information flows to and from the Supervisory Body and specific reporting obligations to the Supervisory Body;
- disciplinary system to penalise the violation of the provisions contained in the Model;
- training and communication plan for employees and others interacting with the Company;
- criteria for updating and adapting the Model;
- Code of Conduct and Business Ethics

The above-mentioned elements are contained in the following documents:

- Organisation, management and control model pursuant to Legislative Decree 231/01 (consisting of this document);
- Code of Conduct and Business Ethics.

There are also tools that assist in ensuring compliance with and application of the Model, which are:

- a disciplinary and sanctions system to be applied in the event of violation of the Model;
- a system of formalised procedures, aimed at regulating in detail the procedures for making and implementing decisions in the areas at risk of commission of the offences provided for in the Decree, as well as aimed at ensuring the documentation and/or verification of operations in these areas;
- a system of company delegations and powers that ensures a clear and transparent representation of the company's decision-making and implementation processes.

In this sense, a further fundamental company document that represents a reference for the Model is the Organisational chart.
Therefore, the Model is represented by a set of coherent principles, rules and provisions that:

- affect the internal functioning and external relations of the Company;
- regulate the diligent management of a control system for Offence Risk Areas, aimed at preventing the commission, even in the form of attempt, of the offences referred to in the Decree.

3.6. The Model and its structure: special section and general section

The document "Organisation, management and control model pursuant to Legislative Decree 231/01" contains:

(i) in the General section, a description of:

- the reference regulatory framework;
- the company's profile, governance system and organisational set-up;
- the characteristics of the Company's Supervisory Body, specifying its powers, duties and information flows;
- the function of the disciplinary system and its sanctioning apparatus;
- the training and communication plan to be adopted in order to ensure awareness of the measures and provisions of the Model;
- the criteria for updating and adapting the Model.

(ii) in the Special section, a description of:

- the types of offences referred to in Legislative Decree 231/2001 that the Company has decided to take into consideration due to the characteristics of its business;
- sensitive processes/activities and related control standards.

The document envisages as an integral part of the Model and an essential element of the control system the Code of Conduct and Business Ethics, which illustrates the ethical principles and values that form the corporate culture and which must inspire the conduct and behaviour of those who work in the interest of the Company both inside and outside the corporate organisation, in order to prevent the commission of the offences underlying the criminal liability of entities.

The approval of the Code of Conduct and Business Ethics creates a coherent and effective body of internal regulations, with the aim of preventing misconduct or behaviour that is not in line with the Company's directives, and is fully integrated with the Organisation, Management and Control Model.

3.7. Map of sensitive activities

Article 6(2)(a) of Legislative Decree No. 231/2001 provides that the Company's Model must identify the company activities within the scope of which the offences included in the Decree may potentially be committed.

We then proceeded to identify, with the support of external consultants, the main offences and the possible methods by which they could be committed, in the area of safety at work, identified as the most "sensitive" area, to be analysed for the purposes of the Decree.

Therefore, in view of the mapping of the company's activities, CARIBONI S.r.l. believes that criminal offences can potentially be committed in the following risk areas:

- management of non-conformity incidents and corrective actions;
- Identification and assessment of risks, preparation of consequent prevention and protection measures to eliminate hazards and reduce occupational health and safety risks.

4. THE SUPERVISORY BODY PURSUANT TO LEGISLATIVE DECREE 231/2001

4.1. The Supervisory Body

Under the provisions of Legislative Decree No. 231/2001 - Article 6(1)(a) and (b) - the entity may be exempted from liability resulting from the commission of offences by persons qualified under Article 5 of Legislative Decree No. 231/2001, if the management body has, *inter alia*:

- adopted and effectively implemented an Organisation, Management and Control Model suitable for preventing the offences in question;
- entrusted the task of supervising the operation of and compliance with the Model and of updating it[27] to a body of the entity endowed with autonomous powers of initiative and control.

The task of continuously supervising the widespread and effective implementation of the Model, its observance by the recipients, as well as proposing its updating in order to improve its efficiency in preventing offences and crimes, is entrusted to such Body set up internally by the Company.

The entrusting of the aforementioned duties to a body endowed with autonomous powers of initiative and control, together with the correct and effective performance thereof, therefore represents an indispensable prerequisite for exemption from liability under Legislative Decree No. 231/2001.

The Confindustria Guidelines[28] suggest that it should be a body characterised by the following requirements:

(i) **autonomy and independence:** this requirement is guaranteed by its positioning within the organisational structure as a staff unit and in as high a position as possible, providing for reporting to the company's top operational management, i.e. to the

Managing Body. Furthermore, for the purposes of independence, the Supervisory Body is not assigned operational tasks;

(ii) **professionalism:** this requirement is ensured by the technical and professional skills possessed by the members of the Supervisory Body. It is therefore capable of effectively performing the assigned activity. Specifically, the chosen composition guarantees suitable knowledge of the law and of the principles and techniques of control and monitoring, as well as of the Company's organisation and main processes;

(iii) **continuity of action:** this requirement stipulates that the Supervisory Body is required to continuously perform the activities necessary for supervising the Model, through adequate commitment and with the necessary powers of investigation, representing a constant reference point for all CARIBONI S.r.l. personnel;

(iv) **integrity:** in relation to the provision of causes of ineligibility, removal, suspension or disqualification from serving as a Supervisory Body as specified below.

Therefore, specifically, the requirements of autonomy and independence would require the absence, for the Supervisory Body, of operational duties which, by making it a participant in operational decisions and activities, would jeopardise its objectivity of judgment, providing that the Supervisory Body reports to the company's top management, as well as the provision, within the annual budgeting process, of financial resources earmarked for the functioning of the Supervisory Body.

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 must be assessed as a whole*".

The requirement of professionalism is to be understood as the theoretical and practical knowledge of a technical-specialist nature necessary to effectively perform the

functions of the Supervisory Body, i.e. the specialised techniques proper to those who perform inspection and advisory activities.

The requirement of continuity of action makes it necessary for the Supervisory Body to have an internal structure continuously dedicated to supervising the Model.

Legislative Decree No. 231/2001 does not provide indications as to the composition of the Supervisory Body[29].

In the absence of such indications, the Company has opted for a solution that, taking into account the purposes pursued by the law, was able to ensure, in relation to its size and organisational complexity, the effectiveness of the controls to which the Supervisory Body is subject, in compliance with the requirements, including those of autonomy and independence, highlighted above.

Within this framework, the Supervisory Body (hereinafter referred to as the "Supervisory Body" or "SB") of the Company is a single-member body identified by virtue of the professional skills acquired and personal characteristics, such as a marked capacity for control, independence of judgement and moral integrity.

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

The Company's Supervisory Body is established by a resolution of the Board of Directors and remains in office for a period of three years, and in any case for as long as the person or body who appointed it remains in office, and may be re-elected.

Appointment as a member of the Supervisory Body is conditional on the presence of the subjective eligibility requirements[30].

In the selection of the member, the only relevant criteria are those pertaining to the specific professionalism and skills required to perform the functions of the Body, integrity and absolute autonomy and independence from the Company; the Board of Directors, at the time of appointment, must acknowledge the existence of the requirements of independence, autonomy, integrity and professionalism[31].

In particular, following the approval of the Model or, in the case of new appointments, at the time the appointment is made, the person appointed as a member of the Supervisory Body must issue a statement certifying the absence of the following grounds for ineligibility:

- conflicts of interest, even potential, with the Company such as to undermine the independence required by the role and duties of the Supervisory Body;
- ownership, direct or indirect, of shareholdings of such a size as to enable it to exercise a significant influence on the Company;
- having held management positions - in the three financial years preceding the appointment as member of the Supervisory Body or the establishment of the consultancy/collaboration relationship with the same Board - of companies subject to bankruptcy, compulsory administrative liquidation or other insolvency procedures;
- a conviction, even if not final, or a judgment applying sentencing on request (plea bargaining), in Italy or abroad, for the offences referred to in Legislative Decree No. 231/2001 or other offences in any case affecting professional morality and good reputation;

- a conviction, with a judgment (even if not final), to a penalty entailing disqualification, even temporary, from public office, or temporary disqualification from the management offices of legal persons and companies;
- if proceedings for the application of a prevention measure under Law No. 1423 of 27 December 1956 and Law No. 575 of 31 May 1965 are pending or in case of issuance of the decree of seizure under Article 2 *bis* of Law No. 575/1965 or decree of application of a prevention measure, whether personal or concerning assets;
- lack of the subjective requisites of integrity provided for by Ministerial Decree No. 162 of 30 March 2000 for the members of the Board of Statutory Auditors of listed companies, adopted pursuant to Article 148, paragraph 4 of the Consolidated Law on Finance.

Should any of the above-mentioned reasons for ineligibility arise with respect to an appointed person, ascertained by a resolution of the Board of Directors, he/she shall automatically forfeit his/her office.

The Supervisory Body may avail itself - under its direct supervision and responsibility - in the performance of the duties 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.

The above-mentioned grounds for ineligibility must also be considered with reference to any external consultants involved in the activity and performance of the duties of the Supervisory Body.

In particular, at the time of appointment, the external consultant must make a declaration in which he or she certifies:

- the absence of the aforementioned reasons for ineligibility or reasons preventing the appointment (e.g. conflicts of interest, family relations with members of the Board of Directors, etc.);
- the fact of having been adequately informed of the provisions and rules of conduct laid down in the Model.

The revocation of the powers pertaining to members of the Supervisory Body and the assignment of such powers to another person(s) may only take place for cause (also linked to organisational restructuring of the Company) by means of a specific resolution of the Board of Directors.

In this regard, "cause" for the revocation of the powers connected with the office of member of the Supervisory Body includes, by way of example and without limitation

- gross negligence in the performance of the duties connected with the office, such as: failure to draw up the half-yearly information report or the annual summary report on the activity carried out, which the Body is required to do; failure to draw up the supervisory programme;
- the "omitted or insufficient supervision" on the part of the Supervisory Body - in accordance with Article 6(1)(d) of Legislative Decree No. 231/2001 - resulting from a conviction, even if not final, issued against the Company pursuant to Legislative Decree No. 231/2001, or from a judgment applying sentencing on request (plea bargaining);
- in the case of an internal member, the assignment of operational functions and responsibilities within the corporate organisation that are incompatible with the requirements of "autonomy and independence" and "continuity of action" of the Supervisory Body. In any case, any provision of an organisational nature concerning him/her (e.g. termination of employment, transfer to another

position, dismissal, disciplinary measures, appointment of a new manager) must be brought to the attention of the Board of Directors;
- in the case of an external member, serious and established grounds of incompatibility that would frustrate their independence and autonomy;
- the loss of even one of the eligibility requirements.

Any decisions concerning the Supervisory Body regarding revocation, replacement or suspension are the sole responsibility of the Board of Directors.

4.3. Functions and powers of the Supervisory Body

The activities performed by the Supervisory Body are autonomous and not subject to review by any other body or function of the Company. The verification and control function exercised by the Body is strictly aimed at the effective implementation of the Model and cannot replace the institutional control functions of the Company.

The Supervisory Body is vested with the powers of initiative and control necessary to ensure effective and efficient supervision of the operation of and compliance with the Model, in accordance with the provisions of Article 6 of Legislative Decree No. 231/2001.

The Body is endowed with autonomous powers of initiative, intervention and control, which extend to all the sectors and functions of the Company. These powers must be exercised to ensure the effective and timely performance of the functions provided for by the Model and its implementing rules.

In particular, the Supervisory Body is entrusted with the following tasks and powers for the performance and exercise of its functions[32]:

- regulate its own functioning also through the introduction of rules governing its own activities that provide for: the scheduling of activities, the determination of the time intervals of controls, the identification of criteria and analysis procedures, the regulation of information flows from company's structures;
- supervise the functioning of the Model both with respect to the prevention of the commission of the offences referred to in Legislative Decree 231/2001 and with reference to the capacity to bring to light the occurrence of any unlawful conduct;
- carry out periodic inspection and control activities, of a continuous nature - with a time frequency and manner predetermined by the Schedule of supervisory activities - and spot checks, in consideration of the various sectors of intervention or types of activities and their critical points in order to verify the efficiency and effectiveness of the Model;
- freely access any department and unit of the Company - without the need for any prior consent - to request and acquire information, documents and data, deemed necessary for the performance of the duties provided for by Legislative Decree No. 231/2001, from all employees and managers. In the event of a substantiated refusal to grant access to the documents, the Body, if it does not agree with the reason given, shall draw up a report to be forwarded to Management;
- request relevant information or the production of documents, including computerised documents, relevant to risk activities, from directors, control bodies, auditing firms, collaborators, consultants and, in general, from all persons required to comply with the Model. The obligation of the latter to comply with the request of the Body must be included in individual contracts;
- take care of, develop and promote the constant updating of the Model, formulating, where necessary, proposals to the management body for any updates and adjustments to be made through amendments and/or additions that may be necessary as a consequence of

(i) significant violations of the provisions of the Model;
(ii) significant changes in the internal structure of the Company and/or the manner in which it conducts its business activities;
(iii) regulatory changes;

- verifying compliance with the procedures laid down in the Model and detecting any behavioural deviations that may emerge from the analysis of the information flows and from the reports to which the heads of the various functions are subject, and proceeding in accordance with the provisions of the Model;
- ensure the periodic updating of the system for identifying sensitive areas, mapping and classifying sensitive activities;
- liaise and ensure the relevant information flows to Management;
- promote communication and training activities on the contents of Legislative Decree No. 231/2001 and the Model, on the impact of the regulations on the company's activities and on the rules of conduct, also establishing controls on frequency. In this regard, it will be necessary to differentiate the programme by paying particular attention to those who work in the various sensitive activities;
- verify that an effective internal communication system is in place to allow the transmission of relevant information for the purposes of Legislative Decree 231/2001, guaranteeing the protection and confidentiality of the author of the report;
- ensure knowledge of the conduct to be reported and how to report it;
- provide clarification on the meaning and application of the provisions contained in the Model;
- formulate and submit for approval by the management body the expenditure forecast necessary for the proper performance of the duties assigned, with absolute independence. This expenditure forecast, which must guarantee the full and proper performance of its activity, must be approved by Management. The Body may autonomously resolve to use resources exceeding its spending

powers, if the use of such resources is necessary to deal with exceptional and urgent situations. In such cases, the Body must inform Management at the immediately following meeting;

- promptly report to the management body, for the appropriate measures, any ascertained violations of the Model that may give rise to liability for the Company;
- verify and assess the suitability of the disciplinary system pursuant to and for the purposes of Legislative Decree 231/2001.

In carrying out its activities, the Body may avail itself of the functions present in the Company according to the relevant skills and expertise, also through the establishment of a Technical Bureau.

4.4. Information obligations vis-à-vis the Supervisory Body - Information flows

The Supervisory Body must be promptly informed, by means of a specific internal communication system, of those acts, behaviours or events from which a situation emerges that may lead to a breach, even potential, of the Model or which, more generally, may be relevant for the purposes of Legislative Decree No. 231/2001.

The Supervisory Body shall monitor potentially sensitive operations and set up an effective internal communication system to allow the transmission and collection of relevant information pursuant to Legislative Decree No. 231/2001, which provides, in Article 6(2)(d), in order to facilitate the proper performance of the duties assigned to it, for the Recipients of the Model's obligation to inform the Supervisory Body.

Reports to the Supervisory Body may concern all violations of the Model, even if only presumed, and facts, both ordinary and extraordinary, relevant to its implementation and effectiveness.

In particular, information concerning the following circumstances must be sent to the Supervisory Body:

- the pendency of criminal proceedings against employees and reports or requests for legal assistance made by personnel in the event of the commencement of legal proceedings for one of the offences provided for in Legislative Decree No. 231/2001;
- reports prepared by the heads of other corporate functions and/or operating units as part of their control activities, from which information on the actual implementation of the Model may emerge, as well as facts, acts, events or omissions with critical profiles with respect to compliance with the provisions of Legislative Decree No. 231/2001;
- information on disciplinary proceedings carried out and any sanctions imposed, in relation to the offences provided for in Legislative Decree No. 231/2001, or on the dismissals of such proceedings and the reasons therefor.

This obligation is also incumbent on all persons (directors, auditors, employees, collaborators, external consultants, suppliers, etc.) who, in the course of their activities, become aware of the aforementioned violations.

The procedures for making and handling reports will be the subject of a specific Protocol, drawn up by Legislative Decree No. 24 of 10 March 2023, as well as by the A.N.AC. (Italian Anti-Corruption Authority) and Confindustria Guidelines.

4.5. Collection and storage of information

Every information, news, report, record provided for in the Model is stored by the Supervisory Body in a special file (computerised or on paper) for a period of at least 10 years.

4.6. Reporting by the Supervisory Body to the corporate bodies

The Supervisory Body reports on the implementation of the Model, on the emergence of any critical aspects, and on the need for amendments.

Meetings with corporate bodies to which the Supervisory Body reports must be documented by means of minutes of the meetings held. The Supervisory Body takes care of the archiving of the relevant documentation.

The Supervisory Body prepares:

- periodically (indicatively annually), an information report on the activities carried out, to be submitted to the Board of Directors;
- on an ongoing and eventual basis, written reports concerning punctual and specific aspects of its activities, deemed of particular importance and significance in the context of prevention and control activities, to be submitted to the Board of Directors;
- immediately, a communication concerning the occurrence of extraordinary situations (e.g. significant violations of the principles contained in the Model, important legislative innovations concerning the criminal 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, to be submitted to the Board of Directors.

The periodical reports prepared by the Supervisory Body are also drawn up in order to allow the Board of Directors to make the necessary evaluations in order to make any updates to the Model, and must at least contain:

- any problems that have arisen concerning the way in which the procedures provided for in the Model or adopted in implementation or in the light of the Model have been implemented;
- reports received from internal and external parties concerning the Model;

- disciplinary procedures and any sanctions applied by the Company, with exclusive reference to activities at risk;
- an overall assessment of the functioning of the Model with possible indications for additions, corrections or modifications.

5. WHISTLEBLOWING

The rules on whistleblowing are summarised in a specific Protocol, drawn up by Legislative Decree no. 24 of 10 March 2023, as well as by the A.N.AC and Confindustria Guidelines, to which reference is expressly made.

6. DISCIPLINARY SYSTEM

6.1. Function of the disciplinary system

Article 6(2)(e) and Article 7(4)(b) of Legislative Decree No. 231/2001 indicate, 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 for the exemption from criminal liability of entities arising from the adoption of the Model.

The adoption of disciplinary measures in the event of violations of the provisions contained in the Model is irrespective of the commission of an offence and of the conduct and outcome of any criminal proceedings brought by the judicial authorities[33].

Compliance with the provisions contained in the Model adopted by the Company must be considered an essential part of the contractual obligations of the "Recipients" defined below.

Violation of their rules damages the relationship of trust established with the Company and may lead to disciplinary, legal or criminal action. In the most serious cases, the violation may lead to the termination of the employment relationship, if carried out by an employee, or to the interruption of the relationship, if carried out by a third party.

In addition to the seriousness of the violation/infringement and/or the act committed, sanctions will also be applied in consideration of: (i) the nature and intensity of the subjective element (ii) possible repeated conducts (iii) the perpetrator's role within and outside the company, as well as his or her duties and position (iv) the degree of trust related to the functions assigned to the perpetrator.

For this reason, each Recipient is required to be familiar with the rules contained in the Company's Model, in addition to the reference rules governing the activity carried out within the scope of his or her function.

This system of sanctions, adopted pursuant to Article 6(2)(e) of Legislative Decree No. 231/2001, is to be considered complementary and not alternative to the disciplinary system established by the National Collective Bargaining Agreement in force and applicable to the different categories of employees working for the Company.

The imposition of disciplinary sanctions for violations of the Model is independent of any criminal proceedings for the commission of one of the offences provided for in the Decree.

The sanction system and its application are constantly monitored by the Supervisory Body.

No disciplinary proceedings may be filed, nor may any disciplinary sanction be imposed, for breach of the Model, without prior information and opinion of the Supervisory Body.

6.2. Sanctions and disciplinary measures

6.2.1. Sanctions against Employees (non-executives)

The Code of Conduct and Business Ethics and the Model constitute a set of rules with which the Company's employees must comply, also pursuant to the provisions of Articles 2104 and 2106 of the Civil Code and the National Collective Bargaining Agreements (CCNL) on the subject of rules of conduct and disciplinary sanctions.

Therefore, all conduct by employees in violation of the provisions of the Code of Conduct and Business Ethics, the Model and its implementation procedures, constitute breaches of the primary obligations of the employment relationship and, consequently, offences, entailing the possibility of disciplinary proceedings and the consequent application of the relevant sanctions.

With respect to the Company, the measures provided for in Articles 50, 51 and 52 of the National Collective Bargaining Agreement for the MECHANICAL INDUSTRY, signed by the social partners Federmeccanica, Assistal, Fim-Cisl, Uilm-Uil, Fiom-Cgil, are applicable to employees with the status of blue-collar, white-collar and middle-managers, in compliance with the procedures provided for in Article 7 of Law No. 300 of 20 May 1970 (Workers' Statute).

Disciplinary infringements may be sanctioned, depending on the seriousness of the infringement, by the following measures:

1) verbal warning;

2) written reprimand;

3) a fine not exceeding 3 hours' hourly pay calculated on the minimum wage;

4) suspension from work and pay for a period not exceeding three days;

5) dismissal with or without notice.

6.2.2. Sanctions against Executives

The relationship with executives is characterised by its eminently fiduciary nature. In addition to being reflected within the Company, constituting a model and example for all those who work there, the executive's behaviour also has repercussions on the Company's external image. Therefore, compliance by the Company's executives with the provisions of the Code of Conduct and Business Ethics, the Model and the relevant implementation procedures is an essential element of the executive employment relationship.

With regard to Executives who have committed a violation of the Code of Conduct and Business Ethics, the Model or the procedures established to implement it, the function holding the disciplinary power initiates the procedures within its competence to make the relevant charges and apply the most appropriate sanctions, in compliance with the provisions of the National Collective Bargaining Agreement for Executives and, where necessary, in compliance with the procedures set forth in Article 7 of Law No. 300 of 30 May 1970.

Sanctions must be applied in compliance with the principles of gradualness and proportionality with respect to the seriousness of the act and negligence or possible intent. Among other things, with the notice of the infringement it is possible to order the revocation of any powers of attorney entrusted to the person concerned as a precautionary measure, up to the possible termination of the relationship in the presence of violations so serious as to break the fiduciary relationship with the Company.

6.2.3. Sanctions against the Board of Directors

In the event of violations of the provisions contained in the Model by the Board of Directors, information shall be given to the Shareholders or the Shareholders' Meeting so that the appropriate measures may be taken in compliance with the regulations or rules adopted by the Company. It is recalled that pursuant to Article 2392 of the Civil Code, directors are liable to the Company for not having fulfilled the duties imposed by law with due care. Therefore, in relation to the damage caused by specific adverse events strictly ascribable to the failure to exercise due care, the Shareholders' Meeting may elect to bring a derivative action against the director(s) pursuant to Article 2393 et seq. of the Italian Civil Code.

In order to guarantee the full exercise of the right of defence, a time limit must be provided within which the person concerned may submit justifications and/or defence papers and may be heard.

6.2.4. Sanctions against collaborators and external persons acting on behalf of the Company

With regard to collaborators or external parties working on behalf of the Company, the sanctions for violations of the Code of Conduct and Business Ethics, the Model and

the relevant implementation procedures and the relevant application methods are determined in advance.

These measures may provide, for more serious violations, and in any case when they are such as to damage the Company's trust in the person responsible for the violations, the termination of the relationship. In the event of a breach by such persons, the contract manager shall inform the legal representative in writing.

6.2.5. Measures against the Supervisory Body

In the event of negligence and/or incompetence on the part of the Supervisory Body in supervising the proper application of the Model and compliance therewith and in failing to identify cases of breach thereof and proceeding to their elimination, Management shall take the appropriate measures in accordance with the procedures provided for by the laws in force, including the revocation of the appointment and without prejudice to the claim for damages.

In order to guarantee the full exercise of the right of defence, a time limit must be provided within which the person concerned may submit justifications and/or defence papers and may be heard.

In the event of alleged unlawful conduct on the part of the Supervisory Body, Management, once it has received the report, investigates the actual wrongdoing that has occurred and then determines the relevant sanction to be applied.

7. TRAINING AND COMMUNICATION PLAN

7.1. Foreword

The Company, in order to effectively implement the Model, intends to ensure proper dissemination of its contents and principles within and outside its organisation.

The main objective of the Company is to disseminate the principles and contents of the Model not only among employees, but also among those who collaborate with the Company, even if not on a stable or continuous basis, through contractual relationships. This includes not only persons who have representation or management roles, but also those who are under their supervision, as specified in Article 5 of Legislative Decree 231/2001. In general, the Model is addressed to all those who contribute to the achievement of the Company's aims and objectives. Therefore, the recipients of the Model include members of corporate bodies, participants in the functions of the Supervisory Body, employees, collaborators, external consultants, suppliers, and others.

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

These recipients are required to duly comply with all the provisions of the Model, also in fulfilment of the duties of loyalty, fairness and diligence arising from the legal relations established by the Company.

The communication and training activities are supervised by the Supervisory Body, which shall, among other things, "promote and define initiatives for the dissemination of knowledge and understanding of the Model, as well as for the training of personnel and making them aware of the principles contained in the Model" and "promote and develop communication and training activities on the contents of Legislative Decree

231/2001, on the impact of the regulations on the company's activities and on the rules of conduct".

7.2. Employees

Each employee is required to: i) become aware of the principles and contents of the Model and of the Code of Conduct and Business Ethics; ii) know the operating methods with which his or her activities must be carried out; iii) contribute actively, in relation to his or her role and responsibilities, to the effective implementation of the Model, reporting any shortcomings found in it.

In order to guarantee an effective and rational communication activity, the Company promotes the knowledge of the contents and principles of the Model and the implementation procedures within the organisation that apply to them, with a degree of in-depth knowledge that varies according to the position and role held.

Employees and new recruits are given an extract of the Model and the Code of Conduct and Business Ethics or are guaranteed the possibility of consulting them directly on the company website in a dedicated area; they are also obliged to sign a declaration of knowledge of and compliance with the principles of the Model and the Code of Conduct and Business Ethics described therein.

In any case, such documentation must be made available to employees by alternative means such as by posting on company notice boards.

Communication and training on the principles and contents of the Model and the Code of Conduct and Business Ethics are ensured by the heads of the individual functions,

who, according to the indications and plans of the Supervisory Body, identify the best way to use these services.

Appropriate communication tools will be adopted to update the recipients of this paragraph on any changes made to the Model, as well as on any relevant procedural, regulatory or organisational changes.

7.3. Members of corporate bodies and persons with the power to represent the Company

The members of the corporate bodies and persons with the power to represent the Company shall be provided with a copy of the Model when accepting the office conferred upon them and shall be obliged to sign a declaration of compliance with the principles of the Model and the Code of Conduct and Business Ethics.

Appropriate communication and training tools will be adopted to update them on any changes made to the Model, as well as any relevant procedural, regulatory or organisational changes.

7.4. Supervisory Body

Specific training or information (e.g. on any organisational and/or business changes in the Company) is intended for the members of the Supervisory Body and/or the persons it uses in the performance of its duties.

7.5. Other recipients

The activity of communicating the contents and principles of the Model must also be addressed to third parties who have relations of cooperation with the Company regulated by a contract (for example: suppliers, consultants and other self-employed

collaborators), with specific reference to those who operate within the scope of activities considered sensitive pursuant to Legislative Decree No. 231/2001.

To this end, the Company will inform third parties that an extract of the reference Principles of the Model and of the Code of Conduct and Business Ethics are available on the company website and will assess the opportunity to organise specific training sessions should it deem it necessary.

8. ADOPTION OF THE MODEL - CRITERIA FOR SUPERVISION, UPDATING AND ADAPTATION OF THE MODEL

8.1. Checks and controls on the Model

The Supervisory Body must draw up an annual action programme by means of which it plans, in principle, its activities, including a calendar of activities to be carried out during the year, the determination of the time intervals of the controls, the identification of the criteria and procedures for analysis, and the possibility of carrying out unscheduled checks and controls.

In the performance of its activities, the Supervisory Body may use the support of both functions and structures within the Company with specific expertise in the company sectors subject to control from time to time and, with reference to the performance of the technical operations necessary for the performance of the control function, of external consultants. In this case, the consultants must always report the results of their work to the Supervisory Body.

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

8.2. Updating 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:

- significant violations of the provisions of the Model;
- changes in the internal structure of the Company and/or in the way the business activities are carried out;
- regulatory changes;
- audit findings.

Once approved, the amendments and the instructions shall be communicated to the Supervisory Body for their immediate application; the SB shall, without delay, make the same operational and ensure the correct communication of their contents within and outside the Company.

The Supervisory Body 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 Management.

In particular, in order to ensure that the changes to the Model are made with the necessary timeliness and effectiveness, the Company shall periodically, where necessary, make changes to the Model that relate to aspects of a descriptive nature.

On the occasion of the presentation of the annual summary report, the Supervisory Body shall submit to the Board of Directors an information note of the changes made in the implementation of the delegation received in order to have them ratified by Management.

In any case, the Board of Directors shall be the only body with the power to decide on updates and/or adjustments to the Model due to the following factors:

- regulatory changes in the area of the criminal 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;
- formulation of observations by the Ministry of Justice on the Guidelines pursuant to Article 6 of Legislative Decree no. 231/2001 and Articles 5 et seq. of Ministerial Decree no. 201 of 26 June 2003;
- commission of the offences referred to in Legislative Decree 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 every three years to be decided by resolution of the Board of Directors.

9. NOTES

[1] These are the following offences: embezzlement to the detriment of the State or the European Union (Article 316-*bis* of the Criminal Code), undue receipt of funds to the detriment of the State (Article 316-*ter* of the Criminal Code), fraud to the detriment of the State or other public body (Article 640(2)(1) of the Criminal Code), aggravated

fraud to obtain public funds (Article 640-*bis* of the Criminal Code), computer fraud to the detriment of the State or other public body (Article 640-*ter* of the Criminal Code), extortion committed by a public official (Article 317 of the Criminal Code), bribery for the exercise of a function and bribery for an act contrary to official duties (Articles 318, 319 and *319-bis* of the Criminal Code), bribery in judicial proceedings (Article *319-ter* of the Criminal Code), undue induction to give or promise benefits (Article 319-quater of the Criminal Code), bribery of a person in charge of a public service (Article 320 of the Criminal Code), offences of the corruptor (Article 321 of the Criminal Code), incitement to bribery (Article 322 of the Criminal Code), extortion by a public official, bribery and incitement to bribery of members of the bodies of the European Communities and officials of the European Communities and foreign states (Article *322-bis* of the Criminal Code).

[2] Article *25-bis* was introduced into Legislative Decree no. 231/2001 by Article 6 of Legislative Decree 350/2001, converted into law, with amendments, by Article 1 of Law 409/2001. These are the offences of counterfeiting money, spending and introducing counterfeit money into the State, with complicity (Article 453 of the Criminal Code), altering money (Article 454 of the Criminal Code), spending and introducing counterfeit money into the State, without complicity (Article 455 of the Criminal Code), spending counterfeit money received in good faith (Article 457 of the Criminal Code), counterfeiting revenue stamps, introducing into the State, purchasing, holding or putting into circulation counterfeit revenue stamps (Article 459 of the Criminal Code), counterfeiting watermarked paper in use for the manufacture of legal tender or revenue stamps (Article 460 of the Criminal Code), manufacture or possession of watermarks or instruments intended for the counterfeiting of money, revenue stamps or watermarked paper (Article 461 of the Criminal Code), use of counterfeit or altered revenue stamps (Article 464 of the Criminal Code). Law No. 99 of 23 July containing "Provisions for the development and internationalisation of enterprises, as well as on energy matters" in Article 15, paragraph 7, amended Article 25-bis, which now also punishes the counterfeiting and alteration of trademarks or distinctive signs (Article

473 of the Criminal Code) as well as the introduction into the State of products with false signs (Article 474 of the Criminal Code).

[3] Article *25-ter* was introduced into Legislative Decree No. 231/2001 by Article 3 of Legislative Decree No. 61/2002 and subsequently supplemented and amended, most recently by Law No. 69 of 27 May 2015. These are the offences of false corporate communications (Article 2621 of the Civil Code), including minor offences (Article *2621-bis* of the Civil Code), false corporate communications of listed companies (Article 2622 of the Civil Code), and false reports or communications of auditing firms (Article 2624 of the Civil Code; Paragraph 1 of Article 35 of Law No 262 of 28 December 2005 - Provisions for the protection of savings and the regulation of financial markets - states that this offence was placed prior to Article 175 of the Consolidated Law referred to in Legislative Decree No 58 of 24 February 1998, as amended, in Part V, Title I, Chapter III, in Article 174-*bis* and 174-*ter*), interfering with the company's audit (Article 2625, second paragraph, of the Civil Code), fictitious capital formation (Article 2632 of the Civil Code), undue return of contributions (Article 2626 c.c.), unlawful distribution of profits and reserves (Article 2627 of the Italian Civil Code), unlawful transactions on shares or quotas of the company or the parent company (Article 2628 of the Italian Civil Code), transactions to the detriment of creditors (Article 2629 of the Italian Civil Code), failure to disclose a conflict of interest (Article 2629-bis of the Italian Civil Code) of Article 25-ter of Legislative Decree 231/2001, undue distribution of corporate assets by liquidators (Article 2633 of the Italian Civil Code), bribery among private individuals (Article 2635 of the Italian Civil Code), unlawful influence on the shareholders' meeting (Article 2636 of the Italian Civil Code), market rigging (Article 2637 of the Italian Civil Code), obstructing the exercise of the functions of public supervisory authorities (Article 2638 of the Italian Civil Code). Legislative Decree 39/2010, implementing Directive 2006/43/EC on the statutory audit of accounts, in repealing Article 2624 of the Civil Code and amending Article 2625 of the Civil Code, did not coordinate with Article *25-ter* of Legislative Decree 231. Article 54 of Legislative Decree No. 19 of 2 March 2023 on cross-border company conversions, mergers and

divisions, adopted in implementation of EU Directive 2019/2121, introduced the offence of "False or omitted statements for the issue of the preliminary certificate".

[4] Article 25-*quater* was introduced into Legislative Decree No. 231/2001 by Article 3 of Law No. 7 of 14 January 2003. It deals with "*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 indicated 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, entered into at New York on 9 December 1999*". This Convention punishes anyone who unlawfully and with intent provides or collects funds knowing that they will be used, even partially, to carry out: (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 an offence under the conventions on: flight and navigation safety, protection of nuclear material, protection of diplomatic agents, repression of attacks using 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. In any case, the main predicate offences are Article 270-*bis* of the Criminal Code (*Associations for the purpose of terrorism, including international terrorism or subversion of the democratic order*), which punishes anyone who promotes, sets up, organises, directs or finances associations that propose the perpetration of violent acts for terrorist or subversive purposes, and Article 270-*ter* (*Assistance to associates*), which punishes anyone who gives refuge or provides food, hospitality, means of transport, or means of communication to any of the persons participating in associations for terrorist or subversive purposes.

[5] The rule provides that the Company may be held liable for the offences of insider dealing (Article 184 of the Consolidated Law on Finance) and market manipulation (Article 185 of the Consolidated Law on Finance). Pursuant to Article 187-*quinquies* of

the Consolidated Law on Finance, the Company may also be held liable for payment of a sum equal to the amount of the administrative fine imposed for the administrative offences of insider dealing (Article 187-*bis* of the Consolidated Law on Finance) and market manipulation (Article 187-*ter* of the Consolidated Law on Finance), if committed in its interest or to its advantage by persons falling within the categories of "senior management" and "persons subject to the direction or supervision of others".

[6] Article 25-*quinquies* was introduced into Legislative Decree 231/2001 by Article 5 of Law No. 228 of 11 August 2003. It deals with offences of reduction to or maintenance in slavery or servitude (Article 600 of the Criminal Code), trafficking in persons (Article 601 of the Criminal Code), purchase and sale of slaves (Article 602 of the Criminal Code), offences related to child prostitution and its exploitation (Article 600-*bis* of the Criminal Code), and the exploitation of child pornography (Article 600-*ter* of the Criminal Code), possession of pornographic material produced through the sexual exploitation of minors (Article 600-*quater* of the Criminal Code), tourist initiatives aimed at the exploitation of child prostitution (Article 600-*quinquies* of the Criminal Code).

[7] The offences set out in Article 10 of Law no. 146 (criminal association, mafia-type association, association for the purpose of smuggling of foreign processed tobacco, association for the purpose of illicit trafficking in narcotic drugs or psychotropic substances, illegal immigration, inducement not to make statements or to make false statements to the judicial authorities, aiding and abetting) are considered **transnational** when the offence has been committed in more than one State, or, if committed in one State, a substantial part of the preparation and planning of the offence has taken place in another State, or if, committed in one State, an organised criminal group engaged in criminal activities in several States is involved.

In this case, no further provisions have been included in the body of Legislative Decree No. 231/2001. The liability arises from an autonomous provision contained in the aforementioned Article 10 of Law No. 146/2006, which establishes the specific administrative sanctions applicable to the offences listed above, providing - by way of

a reminder - in the last paragraph that "*the provisions of Legislative Decree No. 231 of 8 June 2001 shall apply to the administrative offences provided for in this Article*". Legislative Decree no. 231/2007 repealed the rules contained in Law no. 146/2006 with reference to Articles 648-*bis* and 648-*ter* of the Criminal Code (money laundering and use of money, goods or benefits of unlawful origin), which became punishable, for the purposes of Legislative Decree no. 231/2001, regardless of the characteristic of transnationality.

[8] Article added by Article 9, Law No 123 of 3 August 2007.

[9] Article 63(3) of Legislative Decree No. 231 of 21 November 2007, published in the Official Journal No. 290, S.O. No. 268 of 14 December 2007, implementing Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and Directive No. 2006/70/EC, which lays down implementing measures, introduced a new article into Legislative Decree No. 231 of 8 June 2001, which provides for the criminal liability of the entity also in the case of offences committed by a person or entity in connection with the use of the financial system for the purpose of receiving stolen goods, money laundering and using money, goods or benefits of unlawful origin. Article 3, paragraph 5, Law no. 186 of 15 December 2014 has, most recently, amended Article 25 *octies*, Legislative Decree no. 231/2001 by extending the criminal liability of entities also to the new offence of self-laundering provided for in Article 648 *ter.1*, Criminal Code.

[11] Article *25-novies* was added by Article 4 of Law 116/09.

[12] In this regard, Law No. 68 of 22 May 2015 was introduced with the aim of severely combating all illegal activities that have been set up by multiple criminal organisations and that concern the non-regular handling of waste and hazardous products in general.

[13] The article was added by Law No. 167/2017 and amended by Legislative Decree 21/2018.

[14] The article was added by Law No. 39/19.

[15] Article 13(1)(a) and (b) of Legislative Decree 231/2001. In this regard, see also Art. 20 of Legislative Decree 231/2001, pursuant to which "*The offence is deemed repeated when the entity, already definitively convicted at least once for an offence, commits another offence within five years following the final conviction*."

[16] See, in this regard, Article 16 of Legislative Decree 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 impose the sanction of a definitive ban on contracting with the public administration or a ban on advertising goods or services on the entity if 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 prevalent purpose of enabling or facilitating the commission of offences for which it is held liable, a definitive disqualification from exercising the activity is always ordered and the provisions of Article 17 do not apply*".

[17] See Article 15 of Legislative Decree no. 231/2001: 'Judicial Administrator - *If the conditions exist for the application of a disqualification sanction which results in the interruption of the body's activity, the judge, instead of applying the sanction, shall order the continuation of the body's activity by an administrator for a period equal to the duration of the disqualification sanction which would have been applied, when at least one of the following conditions occurs (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, taking into account its size and the economic conditions of the territory in which it is located, cause significant repercussions on employment. In the judgment ordering the continuation of the activity, the judge indicates the duties and powers of the administrator, 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 administrator takes care of the adoption and effective implementation of organisation and control models suitable to prevent offences*

of the kind that have occurred. He or she may not perform acts of extraordinary administration without authorisation from the judge. The profit resulting from the continuation of the activity is confiscated. The continuation of the activity by the administrator cannot be ordered when the interruption of the activity follows the definitive application of a disqualification sanction".

[18] The provision in question makes explicit the legislator's intention to identify an entity's liability that is independent not only of that of the perpetrator of the offence (see, in this regard, Article 8 of Legislative Decree 231/2001) but also of the individual members of the corporate structure. Art. 8 "*Autonomy of the liability of the entity*" of Legislative Decree 231/2001 provides that "*1. the liability of the entity exists even when: a) the author of the offence has not been identified or cannot be charged; b) the offence is extinguished for a reason other than amnesty. Unless the law provides otherwise, an entity is not prosecuted when an amnesty is granted for an offence for which it is responsible and the defendant has waived its application. 3. The entity may waive the amnesty.*"

[19] Art. 11 of Legislative Decree 231/2001: "Criteria for the commensuration of the fine - *1. In the commensuration of the fine, the judge determines the number of quotas, taking into account the seriousness of the offence, the degree of liability of the entity as well as 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 quota is fixed on the basis of the economic and financial conditions of the entity in order to ensure the effectiveness of the sanction.*(...)".

[20] Article 32 of Legislative Decree 231/2001: "Relevance of the merger or demerger for the purposes of repeated offences – *1. In cases of liability of the entity resulting from the merger or beneficiary of the demerger for offences committed after the date on which the merger or demerger took effect, the judge may consider that there has been a repeated offence, in accordance with Article 20, also in relation to convictions pronounced against the merging entities or the demerged entity for offences committed before that date. To this end, the judge shall take into account the nature of the offences*

and the activity in which they were committed as well as the characteristics of the merger or demerger. 3. With regard to the entities beneficiaries of the demerger, repetition of the offence may be applied, pursuant to paragraphs 1 and 2, only if the branch of activity within the scope of which the offence for which the demerged entity was convicted was transferred to them, even partially". The Explanatory Memorandum to Legislative Decree No. 231/2001 makes it clear that "*In such a case, however, the offence is not automatically deemed repeated, but such circumstance is subject to discretionary assessment by the judge, in relation to the concrete circumstances. With regard to the entities beneficiaries of the demerger, the offence may be deemed repeated 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*".

[21] Art. 33 of Legislative Decree 231/2001: "Transfer of business. - *In the event of the transfer of the business in whose activity the offence was committed, the transferee is jointly and severally liable, subject to the benefit of prior enforcement of the transferring entity and within the limits of the value of the business, to pay the fine. 2. The transferee's obligation is limited to the fines resulting from the mandatory accounting books, or due for offences of which the transferee was in any case aware. 3. The provisions of this Article shall also apply in the case of the contribution of a business*". On this point, the Explanatory Memorandum to Legislative Decree No. 231/2001 clarifies: "*It is understood that such transactions may also be sued as a mean to evade liability: and, nevertheless, the opposing requirements of protection of trust and of the safety of legal transfer of property are more important than these, since they are in the presence of cases of non-universal succession that leave the identity (and liability) of the transferor or the transferee unchanged*".

[22] Article 4 of Legislative Decree 231/2001 provides as follows: "*In the cases and under the conditions laid down in Articles 7, 8, 9 and 10 of the 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 take action against them. In cases where the law provides that the*

perpetrator shall be punished at the request of the Minister of Justice, proceedings shall be brought against the entity only if the request is also made against the latter."

[23] Art. 7 of the Criminal Code: "Offences committed abroad - *Any citizen or foreigner who commits any of the following offences on foreign soil is punishable under Italian law: 1) offences against the personality of the Italian State; 2) offences of counterfeiting the seal of the State and the use of such counterfeit seal; 3) offences of counterfeiting money that is legal tender in the territory of the State, or in revenue stamps or in Italian other legal tender; 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 Criminal Code: "Political offence committed abroad - *A citizen or a foreigner who commits a political offence on foreign soil that is not included among those indicated in number 1 of the previous article, is punishable under Italian law, at the request of the Minister of Justice. If it is an offence which can be prosecuted only if the victim files a criminal complaint, the complaint is required in addition to this request. 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 is also considered a political offence.*" Art. 9 of the Criminal Code: "Common offence committed by a citizen abroad - *A citizen who, apart from the cases indicated in the two previous articles, commits on foreign soil an offence for which Italian law establishes life imprisonment, or imprisonment of not less than a minimum of three years, is punished in accordance with the same law, provided he is on State territory. If it is an offence for which a punishment restricting personal liberty of a lesser duration is established, the perpetrator shall be punished at the request of the Minister of Justice or at the request or on complaint of the victim. In the cases provided for in the preceding provisions, if it is an offence committed to the detriment of the European Communities, a foreign State or a foreigner, the guilty party is punished at the request of the Minister of Justice, provided that his or her extradition has not been granted, or has not been*

accepted by the Government of the State where he or she committed the crime." Art. 10 of the Criminal Code: "Common offence of the foreigner abroad - *A foreigner who, apart from the cases indicated in Articles 7 and 8, commits on foreign soil, to the detriment of the State or of a citizen, an offence for which Italian law establishes life imprisonment, or imprisonment of not less than a minimum of one year, is punishable according to the same law, provided that he or she is on State territory, and there is a request from the Minister of Justice, or a request or complaint of the victim. If the offence is committed to the detriment of a foreign State or a foreigner, the perpetrator shall be punished according to Italian law, at the request of the Minister of Justice, provided that 1) he or she is in the territory of the State; 2) it is a crime for which the sentence is life imprisonment or imprisonment of not less than a minimum of three years; 3) his or her extradition has not been granted, or has not been accepted by the Government of the State in which he or she committed the crime, or by that of the State to which he or she belongs*".

[24] Article 38(2) of Legislative Decree 231/2001: "*Separate proceedings are brought for the offence committed by the entity only when: a) proceedings have been ordered to be suspended pursuant to Article 71 of the Code of Criminal* Procedure [suspension of proceedings due to the incapacity of the defendant, Ed.]*; b) the proceedings have been concluded under the abbreviated proceedings procedure or with the application of the sentence pursuant to Article 444 of the Code of Criminal Procedure* [plea bargaining, Ed. note]*, or the criminal decree of conviction has been issued; c) compliance with the procedural provisions makes it necessary.*" For the sake of completeness, reference should also be made to Article 37 of Legislative Decree No. 231/2001, pursuant to which "*the offence of 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 to prosecute*" (i.e. those provided for under Title III of Book V of the Criminal Code: criminal complaint (including that for an offence committed abroad), application to bring proceedings or for authorization to bring proceedings, referred to, respectively, in Articles 336, 341, 342, 343 of the Code of Criminal Procedure).

[25] The Explanatory Memorandum to Legislative Decree 231/2001 in this regard reads as follows: "*For the purposes of the liability of the entity, it is therefore 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 must 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 senior management, the "subjective" requirement for the body's liability [i.e. the so-called* "organisational fault" *of the body] is satisfied, since senior management expresses and represents the body'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 concurring requirements*".

[26] Article 7(1) of Legislative Decree 231/2001: "Persons subject to the direction of others and organisational models of the entity - *In the case provided for in Article 5(1)(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*".

[27] It should be noted that the reference to the Guidelines of that trade association is made by reason of the registration of the Company, and/or of its branch offices, with both Confcommercio and Confindustria. However, since the Confindustria Guidelines provide a more complete and organic description of the topics pertaining to the implementation of Legislative Decree. 231/2001 compared to the more restricted "Code of Ethics" issued by Confcommercio (and moreover largely inspired in its contents by the Confindustria Guidelines, the first version of which predates that of the aforementioned Code of Ethics), it was deemed preferable to use as the primary reference in this document the reference to the provisions of the Confindustria Guidelines, without prejudice to the constant verification of the compatibility of the references made with the corresponding principles expressed by the Confcommercio Code of Ethics.

[28] The Explanatory Memorandum to Legislative Decree no. 231/2001 states, in this regard: "*The entity* (...) *shall also supervise the actual operation of the models, and*

therefore their compliance: to this end, in order to ensure the maximum effectiveness of the system, it is provided that the Company shall make use of a structure that must be set up internally (in order to avoid easy manoeuvres aimed at pre-establishing a licence of legitimacy for the Company's actions through recourse to crooked bodies, and above all to establish a real fault of the entity), endowed with autonomous powers and specifically assigned to these tasks (...) *of particular importance is the provision of a duty to provide information to the aforementioned internal control body, in order to guarantee its own operational capacity* (...)'.

[29] Confindustria Guidelines: "*...the requisites necessary to fulfil the mandate and thus be identified in the Body required by Legislative Decree 231/2001 can be summarised as follows:*

- ***Autonomy and independence:*** *these qualities are achieved by placing the body under review as a staff unit in as high a hierarchical position as possible and by providing for 'reporting' to the highest operational top management or to Management as a whole.*
- ***Professionalism:*** *this connotation refers to the baggage of tools and techniques that the Body must possess in order to effectively perform the assigned activity. These are specialised techniques proper to those who perform "inspection" activities, but also consultancy activities of control system analysis and of a legal and, more specifically, criminal law nature. With regard to inspection and control system analysis activities, there is an obvious reference - by way of example - to statistical sampling; risk analysis and assessment techniques; risk containment measures (authorisation procedures; task contraposition mechanisms; etc.); flow-charting of procedures and processes to identify weak points; interview techniques and questionnaire processing; elements of psychology; fraud detection methodologies; etc. These techniques can be used after the event, in order to ascertain how an offence of the kind under consideration could have occurred and who committed it (inspection approach); or preventively, in order to adopt - at the time of the design of the Model and subsequent amendments - the most*

appropriate measures to prevent, with reasonable certainty, the commission of such offences (consultancy approach); or, again, on an ongoing basis to verify that day-to-day conduct actually complies with those codified.

- ***Continuity of action**: in order to be able to guarantee the effective and constant implementation of a Model as structured and complex as the one outlined above, especially in large and medium-sized companies, it is necessary to have a structure dedicated exclusively and full-time to the activity of supervision of the Model without, as mentioned, operational tasks that could lead it to take decisions with economic and financial effects".*

[30] The Confindustria Guidelines specify that the discipline dictated by Legislative Decree 231/2001 "*does not provide indications as to the composition of the Supervisory Body (SB). This makes it possible to opt for both a single-member and multi-member composition. In the multi-member composition, members of the Body may be both internal and external to the entity* (...). *Although in principle the composition seems indifferent to the legislator, however, the choice between one or the other solution must take into account the purposes pursued by the law and, therefore, must ensure the profile of effectiveness of controls in relation to the size and organisational complexity of the entity*". Confindustria, *Guidelines, June 2021*.

[31] *"This applies, in particular, when a multi-member composition of the Supervisory Body is chosen and all the various professional skills that contribute to the control of corporate management in the traditional Corporate Governance Model are concentrated in it (e.g. a non-executive or independent director who is a member of the internal control committee; a member of the Board of Statutory Auditors; the person in charge of internal control). In these cases, the existence of the requirements referred to is already ensured, even in the absence of further indications, by the personal and professional characteristics required by law for independent directors, statutory auditors and the person in charge of internal controls*". Confindustria, *Guidelines*, June 2021.

[32] In the sense of the need for the Board of Directors, at the time of appointment, "*to acknowledge the existence of the requisites of independence, autonomy, integrity and*

professionalism of its members", Order of 26 June 2007 Court of Naples, Office of the Judge for Preliminary Investigations, Division XXXIII.

[33] *In detail, the activities that the Body is called upon to perform, also on the basis of the indications contained in Articles 6 and 7 of* Legislative Decree 231/2001*, can be summarised as follows:*

- *supervision of the **effectiveness of** the Model, which takes the form of verifying the consistency between the concrete conduct and the established Model;*
- *examination of the **adequacy** of the Model, i.e. of its real (and not merely formal) capacity to prevent, in principle, unwanted conduct;*
- *analysis of the **maintenance of** the soundness and functionality requirements of the Model over time;*
- *taking care of the necessary **updating** of the Model in a dynamic sense, in the event that the analyses carried out make it necessary to make corrections and adjustments. This, as a rule, takes place in two distinct and integrated moments;*
- *submission of **proposals for adaptation of** the Model to the company bodies/departments capable of giving them concrete implementation in the company.*
- ***follow-up**, i.e. verification of the implementation and actual functionality of the proposed solutions.* Confindustria, Guidelines, June 2021.

[34] "*The disciplinary assessment of conduct carried out by employers, subject, of course, to the subsequent possible review by the employment judge, does not, in fact, necessarily have to coincide with the judge's assessment in criminal proceedings, given the autonomy of the breach of the Code of Ethics and of internal procedures with respect to the breach of the law entailing the commission of an offence. The employer is therefore not obliged, before acting, to wait for the end of any criminal proceedings that may be in progress. In fact, the principles of timeliness and immediacy of the sanction make it not only not necessary, but also inadvisable to delay the imposition of the disciplinary sanction while awaiting the outcome of any judgment before the criminal court*". Confindustria, *Guidelines, cit.*, June 2021.

[35] Although the Statutory Auditors cannot be considered - in principle - as persons in senior management, as stated by the same Explanatory Memorandum on Legislative Decree No. 231/2001 (p. 7), it is nevertheless abstractly conceivable that the Statutory Auditors themselves may be involved, even indirectly, in the commission of the offences referred to in Legislative Decree No. 231/2001 (possibly as accomplices of persons in senior management).