

MANAGEMENT AND CONTROL MODEL

Pursuant to Leg. Dec. 231/2001



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GENERAL PART

The administrative liability of legal persons was introduced into Italian law in execution of several international conventions.

The D.lgs. 8 June 2001, No. 231 (*breviter* Decree 231), containing the “*Discipline of the administrative liability of legal persons, companies and associations, including those without legal personality*”, was thus included in our legal system due to the need to comply with urgent supranational commitments.

The extension of the reach of legislation over time has been remarkable.

The innovative scope of the legislation in question lies in the fact that it has created a new form of liability for entities with legal personality, companies and associations, including those without legal personality, for administrative offences dependent on crime.

The liability of the material author of the offence, therefore, is flanked by that of the body, *lato sensu* considered, without replacing it.

In fact, the expression '*liability for offences of entities*' means the attribution to a collective entity of a liability consequent upon and/or related to the commission of an unlawful act by a natural person forming part of the entity itself.

Although the law does not lay down an obligation for legal persons to adopt a management and control model, its implementation is certainly a suitable tool for preventing and/or limiting the Entity's liability under Leg. 231/2001.

As clearly expressed by the Guidelines dictated by Confindustria, in fact, “*The broadening of liability aims to involve in the punishment of certain criminal offences the assets of the entities and, ultimately, the economic interests of the shareholders, who, until the entry into force of the law under review, did not suffer any consequences from the commission of offences committed, to the benefit of the company, by directors and/or employees. The principle of personal responsibility for criminal liability left them, in fact, immune from punitive consequences, other than possible compensation for damages, if and insofar as they existed. In terms of the criminal consequences, in fact, only Articles 196 and 197 of the criminal code provided (and still do) for a civil obligation to pay fines or penalties imposed, but only in the event of the insolvency of the material author of the act. The regulatory innovation, therefore, is of no small moment, as neither the entity nor the members of the companies or associations can be said to be extraneous to criminal proceedings for offences committed to the benefit or in the interest of the entity. This, of course, gives rise*

to an interest on the part of those subjects (shareholders, associates, etc.) who participate in the entity's assets, in the control of the regularity and legality of the company's operations”.

The requirements of the OMCM, which can be deduced from Articles 6 and 7 of Decree 231 and from the guidelines of the main trade associations, can be summarised as follows:

- a) risk analysis, consisting of the identification of the company areas and/or activities at risk of offences and the possible ways in which offences may be committed in these areas and activities (so-called *risk assessment*);
- b) a system of protocols, procedures and controls aimed at regulating the Entity's activities in the areas at risk of offences, including the methods of managing financial resources to prevent the commission of offences;
- c) a Supervisory Board that meets the requirements of autonomy and independence, professionalism and continuity of action;
- d) the provision of information obligations vis-à-vis the Supervisory Board;
- e) an appropriate disciplinary system to sanction any violation of the Model;
- f) the provision of continuous updating of the Model on the basis of changes in the Entity's activity and/or organisation and any unlawful conduct and/or violations of the Model.

All the requirements described above are necessary in order for a OMCM to be considered suitable for preventing the predicate offences relevant to the Legislative Decree. 231/2001.

The regulations

Legislative Decree No. 231 of 8 June 2001

Legislative Decree No. 231 of 8 June 2001 (hereinafter also referred to as 'Decree' or 'LD. 231/2001'), pursuant to Article 11 of Law No. 300 of 29 September 2000, concerns the administrative liability of legal persons, companies and associations, including those without legal personality. This regulatory system outlines the general principles and criteria for attributing administrative liability for offences.

This decree aims to bring domestic legislation on the liability of legal persons into line with certain international conventions:

1. Brussels Convention of 26 July 1995 on the Protection of the European Community's Financial Interests;
2. Convention of 26 May 1997 on the fight against corruption of officials of the European Community and its Member States;
3. OECD Convention of 17 December 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions.

Article 5 of the aforementioned decree holds the entity liable for offences committed in its interest or to its advantage:

- by natural persons holding representative, administrative or managerial positions or an organisational unit thereof having financial and functional autonomy, as well as persons exercising management and control, including de facto management and control over the same¹;
- by natural persons subject to the direction or supervision of one of the above-mentioned persons².

¹ By way of example, persons in a senior position, i.e. the President, Directors, General Managers, the Director of a branch or division, as well as the de facto director or sole shareholder in charge of management, are considered to fall into this category.

² All persons having a functional relationship with the entity must be considered to be 'subordinate' to senior management. Therefore, in addition to subordinate workers, this category also includes persons who have an agency or commercial representation relationship with the Company, or other coordinated and continuous collaboration relationships that are mainly personal and without the constraint of subordination (project work, temporary work, insertion, summer orientation apprenticeship), or any other relationship contemplated by Article 409 of the Italian Civil Procedure Code, as well as occasional workers.

The organisation is not liable if the persons indicated have acted solely in their own interest or in the interest of third parties.

The provision of administrative liability materially involves the assets of the entities and thus the economic interests of the shareholders in the punishment of offences. Among the sanctions that can be imposed, the most onerous for the entity are certainly the disqualification measures, such as the suspension or revocation of licences and concessions, the prohibition on contracting with the public administration, the prohibition on conducting business, the exclusion or revocation of financing and contributions, and the prohibition on advertising goods and services.

Crimes

As to the offences to which the regulation under review applies, these are currently the following types:

1. offences committed in relations with the Public Administration;
2. computer crimes and unlawful data processing;
3. offences relating to counterfeiting money, public credit cards, revenue stamps and identification instruments or signs;
4. certain types of corporate offences;
5. offences with the purpose of terrorism and subversion of the democratic order;
6. offences against the individual personality;
7. insider trading and market manipulation offences;
8. certain offences committed in violation of the rules on accident prevention and the protection of hygiene and health at work;
9. receiving stolen goods, self-laundering, money laundering and use of money, goods or benefits of unlawful origin;
10. transnational crimes;
11. organised crime offences;
12. offences against industry and trade;
13. copyright infringement offences;

14. offences against the administration of justice;
15. environmental offences;
16. offences in the area of recruitment policy.

Specifically, the offences to which the discipline applies are the following:

- 1) Offences committed in relations with the public administration and against property (Articles 24 and 25)
 - a) fraud to the detriment of the State, other public body or the European Union;
 - b) computer fraud to the detriment of the State or other public body;
 - c) embezzlement to the detriment of the State or the European Union;
 - d) misappropriation of funds to the detriment of the State or the European Union;
 - e) aggravated fraud to obtain public funds;
 - f) concussion;
 - g) bribery for an official act;
 - h) bribery for an act contrary to official duties;
 - i) bribery in judicial acts;
 - j) bribery of a person entrusted with a public service;
 - k) incitement to corruption;
 - l) embezzlement, extortion, bribery and incitement to bribery of members of the organs of the European Communities and of officials of the European Communities and of foreign States;
- 2) Computer crimes and unlawful data processing (Article 24-bis)
 - a) unauthorised access to a computer or telecommunications system;
 - b) unlawful interception, obstruction or interruption of computer or telematic communications;
 - c) installation of equipment designed to intercept, prevent or interrupt computer or telematic communications;

- d) damage to information, data and computer programmes;
 - e) damage to information, data and computer programmes used by the State or another public body or in any case of public utility;
 - f) damage to computer and telecommunications systems;
 - g) damage to computer or telematic systems of public utility;
 - h) unauthorised possession and distribution of access codes to computer or telematic systems;
 - i) dissemination of computer equipment, devices or programmes aimed at damaging or interrupting a computer or telecommunications system;
 - j) forgery of computer documents;
 - k) computer fraud of the entity providing electronic signature certification services;
- 3) Counterfeiting money, public credit cards, revenue stamps and identification instruments or signs (Article 25-bis)
- a) counterfeiting of currency, spending and introduction into the State, in concert, of counterfeit currency;
 - b) alteration of coins;
 - c) spending and introduction into the State, without concert, of counterfeit money;
 - d) forgery of revenue stamps, introduction into the State, purchase, possession or putting into circulation of forged revenue stamps;
 - e) counterfeiting watermarked paper in use for the manufacture of public credit cards or stamps;
 - f) manufacture or possession of watermarks or instruments intended for the counterfeiting of currency, revenue stamps or watermarked paper;
 - g) use of counterfeit or altered stamps.
 - h) counterfeiting, alteration or use of trade marks or distinctive signs or of patents, models and designs;
 - i) introduction into the State and trade in products with false signs;
- 4) Corporate offences (Article 25-ter)

- a) false corporate communications;
- b) false corporate communications to the detriment of the company, shareholders or creditors;
- c) false prospectus³;
- d) false statements in reports or communications of auditing companies⁴;
- e) impeded control⁵;
- f) fictitious capital formation;
- g) undue return of contributions;
- h) illegal distribution of profits and reserves;
- i) unlawful transactions involving the shares or quotas of the company or the parent company;
- j) transactions to the detriment of creditors;

³ Article 34 of Law No. 262 of 28 December 2005 (laying down provisions for the protection of savings and the regulation of financial markets and also known as the 'Law on Savings') included the offence of false prospectus in the list of offences provided for by Legislative Decree No. 262 of 28 December 2005. 58/1998 (TUF), in detail in Article 173-bis, repealing, at the same time, Article 2623 of the Civil Code.

The consequence of the aforesaid repeal would seem to coincide with the removal of the offence of false prospectus from the list of so-called predicate offences and, therefore, with the consequent disappearance of the entity's administrative liability.

This would seem to be the thesis accepted by the majority doctrine; however, we consider appropriate give relevance to this crime, on the assumption of an orientation, albeit a minority one, which considers that, notwithstanding the transposition of the offence into the Consolidated Law on Finance, false accounting continues to be relevant for the purposes of incurring the liability of the entity

⁴ Article 37(34) of Legislative Decree no. 27 January 2010, No. 39 repealed Article 2624 of the Civil Code. (falsity in the reports or communications of auditing companies), while introducing Article 27, which provides for the offence of falsity in the reports or communications of auditors; the new offence is broader in application than the previous one, as it also regulates the offence of the auditor of a public interest entity. The type of offence to which Article 25-ter refers has therefore not been repealed from the list of offences, but has only changed its location (since it is no longer provided for by the Civil Code, but by Legislative Decree no. 231/2001). 39/2010); therefore, even in the absence of an express link between D. Lgs. 231/2001 and the new type of offence, it is nevertheless deemed appropriate to leave the reference to the offence of falsity in reports or communications by auditors, which consequently continues to be analysed when mapping out sensitive activities and processes¹.

⁵ Article 37(35) of Legislative Decree. 27 January 2010, No. 39 amended Article 2625, paragraph 1, of the Civil Code by excluding auditing from the list of activities that the law sanctions the prevention of auditing by directors; the prevention of auditing by auditors is now governed by Article 29 of Legislative Decree No. 58 of 27 January 2010. Lgs. 39/2010, which provides that "1. members of the administrative body who, by concealing documents or by other suitable artifices, prevent or otherwise obstruct the performance of statutory auditing activities shall be punished by a fine of up to EUR 75,000. 2. If the conduct referred to in subsection 1 has caused damage to shareholders or third parties, a fine of up to EUR 75,000 and a term of imprisonment of up to 18 months shall apply, 3. In the case of statutory audits of public interest entities, the penalties referred to in paragraphs 1 and 2 are doubled. 4. We proceed ex officio¹.

- k) undue distribution of corporate assets by the liquidators;
 - l) unlawful influence on the assembly;
 - m) agiotage;
 - n) obstructing the exercise of the functions of public supervisory authorities;
 - o) failure to disclose a conflict of interest;
 - p) corruption between private individuals;
 - q) Incitement to bribery among private individuals and accessory penalties;
- 5) Crimes for the purpose of terrorism and subversion of the democratic order (Article 25-quater)
- 6) Offences against the individual (Articles 24-quater.1 and 25-quinquies)
- a) reduction or maintenance in slavery or servitude;
 - b) child prostitution;
 - c) child pornography;
 - d) possession of pornographic material;
 - e) virtual pornography;
 - f) tourist initiatives aimed at the exploitation of child prostitution;
 - g) trafficking in persons;
 - h) purchase and alienation of slaves;
 - i) practices of female genital mutilation;
- 7) Offences of insider trading and market manipulation (Article 25-sexies)
- 8) Manslaughter and grievous or very grievous bodily harm committed in breach of the rules on accident prevention and the protection of hygiene and health at work (Article 25-septies)
- 9) Receiving, laundering, self-laundering, use of money, goods or benefits of unlawful origin (Article 25-octies)
- 10) Offences relating to non-cash payment instruments (Art. 25-octies.1)

11) Transnational offences⁶

- a) criminal conspiracy;
- b) mafia-type association;
- c) criminal conspiracy to smuggle foreign tobacco products;
- d) association for the purpose of illicit trafficking in narcotic drugs or psychotropic substances;
- e) provisions against illegal immigration;
- f) inducement not to make statements or to make false statements to the judicial authorities;
- g) personal aiding and abetting;

12) Organised crime offences (Article 24-ter)

- a) offences of criminal conspiracy aimed at reducing to or maintaining in slavery, trafficking in persons, the purchase and sale of slaves and offences concerning violations of the provisions on illegal immigration;
- b) mafia-type associations, including foreign ones;
- c) political-mafia electoral exchange;
- d) kidnapping for the purpose of extortion;
- e) criminal conspiracy to distribute narcotic or psychotropic substances;
- f) criminal conspiracy;
- g) offences relating to the manufacture of and trafficking in weapons of war, explosives and clandestine weapons;

13) Crimes against industry and trade (Article 25-bis.1)

- a) disturbing the freedom of industry and trade;

⁶ It should be noted that the commission of so-called transnational" offences are only relevant if the offence is punishable by a maximum term of imprisonment of no less than four years and involves an organised criminal group, and (i) is committed in more than one State (ii) is committed in one State, but a substantial part of its preparation, planning, direction or control takes place in another State (iii) is committed in one State, but involves an organised criminal group engaged in criminal activities in more than one State (iv) is committed in one State but has substantial effects in another State.

- b) fraud in the exercise of trade;
- c) sale of non-genuine foodstuffs as genuine;
- d) sale of industrial products with false signs;
- e) manufacture of and trade in goods made by usurping industrial property rights;
- f) counterfeiting of geographical indications or designations of origin for agri-food products;
- g) unlawful competition with threats or violence;
- h) fraud against national industries;

14) Copyright infringement offences (Art. 25-nonies)

15) Crimes against the administration of justice (Article 25-decies)

16) Environmental offences (Art. 25-undecies)

- a) discharge of industrial waste water containing dangerous substances without or in breach of the requirements imposed by the authorisation or by the competent authorities (Article 317(3) TUA);
- b) discharge of industrial waste water containing dangerous substances in breach of the tabular limits or more restrictive limits set by the Regions or Autonomous Provinces or by the competent Authority (Article 137(5), first sentence, TUA);
- c) discharge into the sea by ships or aircraft of substances or materials whose spillage is prohibited, except in minimum quantities and authorised by the competent authority (Art. 137(13) TUA);
- d) unauthorised discharge (no, suspended or revoked authorisation) of industrial waste water containing dangerous substances (Article 137(2), TUA);
- e) discharge of industrial waste water containing dangerous substances in breach of the tabular limits or more restrictive limits set by the Regions or Autonomous Provinces or by the competent Authority (Article 137(5), second sentence, TUA);
- f) discharges on the soil and discharges into the subsoil and groundwater in breach of the prohibitions laid down in Articles 103 and 104 UEL (Article 137(11) UEL);
- g) collection, transport, recovery, disposal, trade and intermediation of waste without the prescribed authorisation, registration or communication (Article 256(1)(a) TUA);

- h) temporary storage at the place of production of hazardous medical waste (Art. 256, paragraph 6, first sentence TUA);
- i) construction and operation of an unauthorised landfill (Article 256(3), first sentence TUA);
- j) unauthorised mixing of waste (Article 256(5) TUA);
- k) pollution of soil, subsoil, surface water and groundwater by exceeding risk threshold concentrations and failure to notify the competent bodies (without prejudice to remediation) (Article 257(1), TUA);
- l) shipments of waste constituting illegal trafficking. The conduct is aggravated if it concerns hazardous waste (Article 259(1) TUA);
- m) activities involving the unauthorised transfer, receipt, transport, export, import or handling of large quantities of waste (Article 260(1) TUA);
- n) preparation of a false waste analysis certificate (Article 260-bis, paragraph 6, TUA);
- o) transport of hazardous waste without a hard copy of the SISTRI form (Article 260 bis, paragraph 7, second and third sentences TUA);
- p) violation of emission limits and related requirements (Art. 279, para. 5);
- q) Offences provided for by Law 150/1992 - Discipline of offences relating to the application in Italy of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed in Washington on 03.03.1973, referred to in Law 874/1975 and Regulation (EEC) No. 3626/82, as amended, as well as rules for the marketing and possession of live specimens of mammals and reptiles that may constitute a danger to public health and safety;
- r) import, export, possession, use for profit, purchase, sale, display or possession for sale or commercial purposes of protected species;
- s) possession of live specimens of mammals and reptiles of wild or captive-bred species, which constitute a danger to public health and safety;
- t) import, export, possession, use for profit, purchase, sale of protected species;
- u) forgery or alteration of certificates and licences; false or altered notifications, communications or declarations for the purpose of acquiring a certificate or licence; use of false or altered certificates and licences for the import of animals;

- v) L. 549/1993 art. 3, paragraph 6 - Measures to protect stratospheric ozone and the environment;
 - w) Violation of the provisions requiring the cessation and reduction of the use of ozone-depleting substances;
 - x) Legislative Decree. 202/2007 - Implementation of Directive 2005/35/EC on ship-source pollution and subsequent sanctions;
 - y) if the entity or one of its organisational units is permanently used for the sole or predominant purpose of enabling or facilitating the commission of the offences set out in Article 260. Legislative Decree. 152/2006 or Art. 202/2007;
- 17) Offences relating to recruitment policy with reference to the employment of non-EU citizens (Article 25-duodecies);
 - 18) Racism and xenophobia (Art. 25l);
 - 19) Liability of entities for administrative offences (Article 12, Law No. 9/2013);
 - 20) Transnational offences (Law 146/2006)
 - 21) Fraud in sporting competitions, unlawful gaming or betting and gambling by means of prohibited devices (Art. 25m)
 - 22) Tax offences (Article 25n)
 - 23) Smuggling (Art. 25 sexdecies)
 - 24) Crimes against the cultural heritage (Article 25p)
 - 25) Laundering of cultural goods and devastation and looting of cultural and landscape assets (Article 25k)

Associative offences

With the enactment of Law No. 94/2009, the following was introduced into the body of Legislative Decree. 231/2001 Article 24b on organised crime.

Thus, 231 offences include not only simple criminal conspiracy but also mafia-type criminal conspiracy and conspiracy to traffic drugs or psychotropic substances (even when not transnational).

Offences committed abroad

According to Art. 4 of Leg. 231/2001, the entity may be held liable in Italy in relation to offences - covered by the same Legislative Decree. Lgs. 231/2001 - committed abroad. The Explanatory Report to Legislative Decree. 231/2001 emphasises the need not to leave a frequently occurring criminal situation unsanctioned, also in order to avoid easy circumvention of the entire regulatory framework in question.

The prerequisites on which the liability of the entity for offences committed abroad is based, provided for in the legislation or inferable from the whole of Legislative Decree no. 231/2001, are as follows:

- 1) the offence must be committed abroad by a person who is functionally linked to the entity, pursuant to Article 5(1) of Legislative Decree no. 231/2001;
- 2) the entity must have its head office in the territory of the State;
- 3) the entity may be liable only in the cases and under the conditions laid down in Articles 7, 8, 9, 10 of the Criminal Code. This reference is to be coordinated with the provisions of Articles 24 to 25-nonies of Legislative Decree no. 231/2001, so that - also in compliance with the principle of legality under Article 2 of Legislative Decree no. 231/2001 - against the series of offences mentioned in Articles 7-10 of the Criminal Code, the company may only be liable for those for which its liability is provided for by an *ad hoc* legislative provision;
- 4) the entity may be liable in cases where the State in which the act was committed does not prosecute it.

In cases where the law provides that the offender is punished at the request of the Minister of Justice, proceedings are brought against the entity only if the request is also made against the entity itself.

The sanctions provided for

Financial penalties

Monetary sanctions are administrative in nature and always apply, even if the legal person remedies the consequences of the offence.

The commensuration of the penalty depends on a twofold criterion:

1. determination of quotas in a number not less than 100 and not more than 1,000;
2. assignment to each individual share of a value ranging from a minimum of € 258.00 to a maximum of € 1,549.00 (on the basis of the entity's economic and patrimonial conditions).

Specifically, the financial penalties may range from a minimum of €25,822.84 (reducible, pursuant to Article 12 of the Decree, up to half) to a maximum of €1,549,370.69.

The court determines the number of shares taking into account:

1. the seriousness of the fact;
2. the degree of the entity's liability;
3. of the activity carried out to eliminate or mitigate the consequences of the act and to prevent the commission of further offences.

Disqualification sanctions

They are penalties in addition to the pecuniary ones and have the function of preventing the reiteration of the offence.

In applying these penalties, the judge has particular regard for the activity carried out by the entity.

In fact, this category includes the following measures:

1. disqualification from exercising the activity;
2. the prohibition to contract with the Public Administration;
3. suspension or revocation of authorisations, licences or concessions functional to the commission of the offence;
4. exclusion from facilitations, financing, contributions and subsidies, and/or the revocation of those already granted;
5. the ban on advertising goods or services.

In the event of multiple offences, the sanction provided for the most serious one applies.

The duration of the disqualification is generally temporary (from a minimum of 3 months to a maximum of 2 years), with the exception of certain mandatory cases, in which the temporary nature of the disqualification is replaced by its finality. By way of example:

1. in the event of repetition of the offence;
2. in the case of substantial profit;
3. in case of repetition at least three times in the last seven years

We also note the possible continuation of the entity's activity (instead of the imposition of the sanction) by a commissioner appointed by the judge pursuant to Article 15 of Legislative Decree no. 231/2001, when one of the following conditions is met:

1. the entity performs a public service or a service of public necessity the interruption of which may cause serious harm to the community;
2. the interruption of the institution's activity may, in view of its size and the economic conditions of the territory in which it is located, have significant repercussions on employment.

Confiscation

It is a penalty applicable at the same time as the conviction and consists in the confiscation, by the Judicial Authority, of the price or profit generated by the crime, excluding the part of it that can be returned to the injured party.

If confiscation of the proceeds or profit of the offence is not possible, sums of money, goods or other utilities of equivalent value to the price or profit of the offence are confiscated.

The publication of the conviction

The publication of the conviction is ordered when a disqualification sanction is imposed on the entity.

The judgement shall be published (at the expense of the legal person convicted) once only, in excerpts or in full, in one or more newspapers indicated by the judge in the judgement, as well as by posting in the municipality where the entity has its head office.

Attempted crimes

In the event of the commission, in the form of attempt, of the offences set out in Chapter I of LD. 231/2001, pecuniary sanctions (in terms of amount) and prohibitory sanctions (in terms of time) are reduced by

between one third and one half, while sanctions are excluded in cases where the entity voluntarily prevents the performance of the action or the realisation of the event.

Exemption from liability

Articles 6 and 7 of Leg. 231/2001 provide for a form of exemption from liability if the entity proves that

1. 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;
2. the task of supervising the operation of and compliance with the models and ensuring that they are updated has been entrusted to a body of the entity endowed with autonomous powers of initiative and control;
3. the persons committed the offence by fraudulently circumventing the organisation and management models;
4. there has been no or insufficient supervision by the body referred to in (b).

In relation to the extent of the delegated powers and the risk of offences being committed, the models must meet the following requirements:

1. identify the activities within the scope of which offences may be committed;
2. provide for specific protocols aimed at planning the formation and implementation of the entity's decisions in relation to the offences to be prevented;
3. identify ways of managing financial resources that are suitable for preventing the commission of offences;
4. provide for information obligations vis-à-vis the body in charge of supervising the functioning of and compliance with the models;
5. introduce a private disciplinary system, suitable for penalising non-compliance with the measures indicated in the Model.

A distinction should also be made:

- if the offence has been committed 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, the entity shall not be liable if it proves the preceding points;

- if the offence is committed by persons subject to the management or supervision of one of the above-mentioned persons, the entity is liable if the commission of the offence was made possible by non-compliance with the obligations of management and supervision; but such non-compliance is excluded if the entity, before the commission of the offence, adopted and effectively implemented an organisational, management and control Model capable of preventing offences of the kind committed.

Art. 6 of the Decree provides, finally, that organisational and management models may be adopted on the basis of codes of conduct drawn up by representative trade associations, communicated to the Ministry of Justice, which, in agreement with the competent Ministries, may make observations on the suitability of the models to prevent offences.

The Model

Objective of the Model

Fresh Ways S.r.l. intends to adhere to and spread a business culture of legality and ethics.

Hence the corporate decision of Fresh Ways S.r.l. to adopt an Organisational, Management and Control Model pursuant to Legislative Decree No. 231/2001. 231/2001.

In particular, through the introduction of the Organisation, Management and Control Model, the Company pursues the intention of regulating and consolidating its corporate *compliance* system, and to this end, it has determined to systematically implement the processes and activities it carries out in order to prevent the possible commission of the offences referred to in Legislative Decree No. 231/2001. 231/2001.

For these reasons, in the first place, it was necessary to identify and circumscribe the activities that, even only in the abstract and potential, present a greater probability of resulting in criminal conduct that is relevant under Leg. 231/2001 and are therefore classifiable as 'sensitive activities'.

Through the adoption of the Model, Fresh Ways S.r.l. aims to

1. set the values of ethics and respect for legality;
2. determine in the recipients of the Model the awareness that they may incur, in the event of violation of the provisions contained therein, in the commission of offences punishable by criminal sanctions that may be imposed on them and by administrative sanctions that may be imposed on the Company;
3. reiterate that such forms of unlawful behaviour are strongly condemned by FRESH WAYS S.R.L. S.p.A., since the same (even if the Company were apparently in a position to take advantage of them) are in any case contrary not only to the provisions of the law, but also to the ethical principles to which it intends to adhere in the exercise of its business activities;
4. enable the Company, by monitoring the areas of activity at risk, to take timely action to prevent or counteract the commission of offences.

The acceptable risk

A critical concept in the construction of the organisational and management model is that of acceptable risk. Indeed, for the purposes of applying the rules of the decree, it is important to define a threshold that allows a limit to be set on the quantity and quality of the preventive instruments to be introduced to inhibit the commission of the offence. In relation to the risk of commission of the offences referred to in Leg. 231/2001, the threshold of acceptability is represented by a preventive system such that it cannot be circumvented unless intentionally, i.e., for the purposes of the exclusion of the entity's administrative liability, the persons having committed the offence must have acted by fraudulently circumventing the Model and the controls adopted.

The Model's construction phases

Preliminary analysis of the business environment

The objective of this phase was the prior examination, by means of document analysis and interviews with informed persons within the company structure, of the organisation and activities carried out by the various functions, as well as the company processes into which the activities are divided.

In particular, the procedures and preventive measures formalised in writing by the company for its proper operation were examined.

Identification of 'crime risk' areas of activity and business processes

Through the above-mentioned preliminary analysis of the company context and existing procedures, the following were identified:

- the areas of activity that are 'sensitive' to the potential commission of offences, i.e. the activities within the scope of which opportunities for the commission of the unlawful conduct provided for in the Decree may hypothetically arise;
- processes 'instrumental' to the commission of the offences referred to in the Decree, i.e. processes in the context of which, in principle, the conditions and/or instruments for committing offences could be created.

The analysis is set out in the 'mapping of sensitive activities and instrumental processes' in Annex 2 and subsequent additions.

Based on the results of the *Risk Assessment*, at present, the following types of offence have been assessed as not relevant although abstractly applicable to the company:

1. Computer crimes and unlawful processing of data;
2. Copyright infringement offences;
3. Crimes against the individual personality;
4. Crimes of terrorism;
5. Offences of counterfeiting money in public credit cards, revenue stamps and instruments or identifying marks;
6. Market abuse.

The aforementioned consideration is the result of a hypothetical prognostic assessment, developed starting from the analysis of the Entity's history and the events significant to it, as well as linked to the analysis of Fresh Ways S.r.l.'s *core business* .

Applying the same criteria, the following offences 231 were considered relevant and abstractly configurable:

1. Crimes against the P.A;
2. Corporate offences and the offence of corruption between private individuals;
3. Organised crime and transnational crimes;
4. Health and safety at work;
5. Employment of third-country nationals;
6. Environmental offences;
7. Crimes of xenophobia;
8. Tax offences;
9. Smuggling;
10. Offences relating to non-cash payment instruments.

The principles of an ethical-behavioural nature laid down in this Model shall in any case apply to these categories of offence, where they can be traced back to them.

Therefore, the sensitive activities of Fresh Ways S.r.l. were circumscribed and, at the same time, the relevant *Key Officers* were identified.

An assessment of the level of potential risk associated with each sensitive activity/process was then carried out, according to a *risk assessment* methodology based on the following elements:

1. identification and weighting of the two macro axes for the analysis of residual risk:

- ✓ strength of control: adequate, partially adequate, not adequate, absent;
- ✓ inherent risk: low, medium, high, critical.

2. assignment and weighting, for each of the macro axes, of specific evaluation parameters, according to the following scheme:

- ✓ for the Force axis of control:
 - frequency of occurrence/performance of the activity described and other economic-quantitative indicators of relevance of the business activity or process (e.g.: economic value of the transactions or acts performed, number and type of persons involved, etc.);
 - likelihood of occurrence, in the operational context, of the alleged offence (e.g. presumed 'ease' of realisation of the criminal conduct in relation to the reference context);
 - any history of commission of offences in the Company or more generally in the sector in which it operates;
- ✓ for the Inherent Risk axis:
 - seriousness of the penalties potentially associated with the commission of one of the offences provided for in Decree 231/2001 in the course of the activity;
 - potential benefit that would accrue to the Company as a result of the commission of the alleged unlawful conduct and that could provide leverage to the commission of the unlawful conduct by Company personnel;

3. assignment of a specific rating to each analysis parameter on the basis of a qualitative scale (e.g. low, medium, high, critical);

4. definition of an overall (axis and total) assessment and assignment of a summary risk rating based on it, qualified as follows: critical, high, medium and low risk.

It should be noted that the above variables were used to define a gradation of the general risk associated with individual sensitive activities.

Model Drawing

Following the activities described above, Fresh Ways S.r.l. deemed it appropriate to define the operating principles and reference 'protocols' of the Organisational Model it intends to implement, bearing in mind the provisions of the Decree.

Adoption and addressees of the Model

The Company is sensitive to the need to ensure conditions of correctness and transparency in the conduct of business and corporate activities, to protect its own position and image, and the work of its employees, and is aware of the importance of having an internal control system capable of preventing the commission of unlawful conduct by its directors, employees, collaborators, representatives, partners and agents.

This initiative was taken in the conviction that the adoption of the Model may constitute a valid tool for raising awareness and ethical training of all those who work in the name and on behalf of the Company, so that they may behave correctly and consistently in the performance of their activities, such as to prevent the risk of commission of the offences provided for in the Decree itself.

Although the adoption of the Model is provided for by law as optional and not mandatory, FRESH WAYS S.R.L. S.p.A., in accordance with Article 6(1)(a) of Legislative Decree no. 231/2001, which requires the Model to be an 'act of issuance by the management body', definitively adopted its Model by decision of the Board of Directors on 12.04.2019.

At the same time, Fresh Ways S.r.l. set up a special Supervisory Body in monocratic composition with the task of supervising the functioning, effectiveness and observance of the Model itself, as well as taking care of its updating.

With the formal adoption of the Model, it becomes an imperative rule for the Company, for the members of the corporate bodies (meaning the Board of Directors and, where required, the shareholders), for

employees and for anyone operating in any capacity on behalf of or in the interest of the Company (collaborators, consultants, suppliers, partners, etc.).

The adoption and effective implementation of this system enables the Company to benefit from the exemption from liability provided for in the Legislative Decree. 231/2001 wherever possible and/or to reduce the risk of prejudicial events to acceptable levels by acting directly on the probability of the event occurring and its impact.

Updating the Model

Subsequent amendments or additions of a substantive nature, including those proposed by the Supervisory Board (meaning amendments to the rules and general principles contained in this Model), shall be the responsibility of the Company's Board of Directors. For the adoption of amendments other than those of substance, the Board of Directors shall in each case provide.

The Structure and Characteristics of the Model

This Model consists of:

- a 'General Part', which describes the relevant legislation and the general rules of operation of the Model and the Supervisory Board;
- a 'Special Section', focusing on the areas of activity and instrumental processes deemed 'sensitive', the rules of conduct and other control instruments - already in place in the company or set up *ad hoc* for the purposes of Legislative Decree no. 231/2001 - considered relevant in relation to the offences to be prevented and on organisational structures.

The Company undertakes to effectively implement the Model, to constantly adapt it to changes in the internal and external context and to ensure its observance and operation by applying specific methodologies, adopting the operating methods deemed most appropriate each time and complying with mandatory control principles.

The Model fits into the broader system of organisation, control and quality already existing in FRESH WAYS S.R.L. and which it intends to integrate with the following qualifying elements:

1. The dissemination of a Code of Ethics and Conduct;
2. The definition of the codification of operational procedures internal to the company and already in use at the company;
3. The mapping of company activities and processes that are 'sensitive' with respect to the commission of the offences provided for in the Legislative Decree. 231/2001 to be periodically analysed and monitored (Annex 2 and subsequent additions);
4. The rules of conduct with which the Company has complied, aimed at preventing the occurrence of the offences provided for in Legislative Decree no. 231/2001;
5. The assignment to a Supervisory Board (hereinafter also SB) of the Company of the tasks of supervising the effective and correct functioning of the Model;
6. A frequency of information flows to the Supervisory Board;
7. The implementation of an appropriate penalty system to ensure the effective implementation of the Model, containing the disciplinary provisions applicable in the event of non-compliance with the measures indicated in the Model;
8. The verification and documentation of every relevant commercial and corporate transaction;
9. Respect for the principle of the separation of functions, guaranteed by the presence of a system of attribution of powers that defines precise limits to the decision-making power of individuals and guarantees the separation between those who propose and those who authorise, between those who execute and those who control and, consequently, the absence in the company of individuals with absolute and unconditional power over an entire process;
10. The definition of authorisation powers consistent with the assigned responsibilities;
11. An availability to the Supervisory Board of company resources of an adequate number and value proportionate to the expected and reasonably achievable results;
12. The rules and responsibilities for the adoption, implementation and subsequent amendments or additions to the Model (updating of the Model), as well as for the ongoing verification of the functioning and effectiveness of the Model;
13. Awareness-raising, information and dissemination activities at all company levels and to external recipients of the established rules of conduct and procedures.

The general principles of the organisational and control system of FRESH WAYS S.R.L.

Introduction

This Organisational, Management and Control Model, without prejudice to the specific purposes described above and relating to Legislative Decree. 231/2001, is part of the wider management and control system already in place in the company and adopted in order to provide reasonable assurance that the company's objectives are achieved in compliance with laws and regulations, that financial information is reliable and that assets are safeguarded, including against possible fraud.

In particular, as specific instruments aimed at planning the formation and implementation of the Company's decisions and at guaranteeing an appropriate control over them, also in relation to the offences to be prevented, Fresh Ways S.r.l. has identified the components illustrated below.

General preventive organisational system and separation of roles

The organisational system must meet the requirements of:

1. clarity, formalisation and communication, with particular reference to the allocation of responsibilities, the definition of hierarchical lines and the assignment of operational activities;
2. separation of roles, i.e. organisational structures are structured in such a way as to avoid functional overlaps and the concentration on one person of activities with a high degree of criticality or risk.

In order to guarantee these requirements, the company has organisational tools (organisational charts, organisational communications, codified procedures, etc.) based on the general principles of

1. knowability within the Company;
2. clear description of the carry-over lines;
3. clear and formal demarcation of roles, with a description of the tasks and responsibilities assigned to each function.

Delegations of power

At the time the Model was extended, the Company was already partially endowed with a system of written proxies for internal authorisation powers, on which the company's decision-making processes on the

operations to be carried out depended, or powers of representation for signing deeds or documents intended for external use and capable of binding the Company (so-called special or general 'proxies'). S

In any case, it will be the task of the Supervisory Board during its term of office to verify that the aforementioned proxies - and those that will be subsequently drawn up - meet the following requirements:

1. be clearly defined and formally assigned by means of written communications;
2. be consistent with the delegated responsibilities and tasks and with the positions held within the organisational structure;
3. provide for exercise limits consistent with the roles assigned, with particular attention to spending powers and powers to authorise and/or sign operations and acts considered "at risk" within the company;
4. be updated as a result of organisational changes.

The Company undertakes to ensure the timely updating of the delegation of powers, establishing the cases in which powers must be assigned, amended and revoked (assumption of new responsibilities, transfer to different tasks incompatible with those for which they were conferred, resignation, dismissal, etc.).

Operational Procedures

Operational processes and activities are supported by formalised internal procedures and/or in the process of further formalisation in writing, with the following characteristics:

1. adequate dissemination within the corporate structures involved in the activities;
2. regulation of the manner and timing of activities;
3. clear definition of the responsibilities of activities, in compliance with the principle of separation between the person who initiates the decision-making process, the person who executes and concludes it, and the person who controls it;
4. traceability of acts, operations and transactions by means of appropriate documentary and telematic supports that attest to the characteristics and motivations of the operation and identify the persons involved in the operation in various capacities (authorisation, execution, registration, verification of the operation);

5. objectivisation of decision-making processes, by providing, where possible, defined reference criteria and methodologies for making company choices;
6. provision of specific control mechanisms (such as reconciliations, reconciliations, etc.) to ensure the integrity and completeness of the data managed and information exchanged within the organisation.

Control and monitoring activities

They involve, with different roles: the Board of Directors, the Supervisory Board, persons with responsibilities in the field of safety and, more generally, all company personnel, and represent an indispensable attribute of the daily activities carried out by FRESH WAYS S.R.L.

The control tasks of these bodies are defined in accordance with the following types of control:

1. *supervising* the proper administration of the Company, the adequacy of organisational structures and compliance with the law and the articles of association;
2. *line controls*, aimed at ensuring the proper conduct of operations and carried out by the production facilities themselves or incorporated into procedures;
3. *internal audit*, aimed at detecting anomalies and violations of company procedures and assessing the functionality of the overall internal control system and exercised by structures that are independent of operational structures;
4. *external audit*, aimed at verifying the regular application of company procedures and their compliance with current legislation;
5. *control and management*, in relation to the timely reporting of critical situations and the definition of appropriate risk indicators.

Traceability

Every operation must be properly recorded.

The process of decision, authorisation and performance of the activity must be verifiable *ex post*, also by means of appropriate documentary aids, and, in any case, the cases and modalities of the possible cancellation or destruction of the records made must be regulated in detail.

For this reason, the Company considers it essential to ensure the correct and concrete application of the above-mentioned control principles in all areas of business activities/processes identified as potentially at risk of offence during the mapping phase and already listed.

The task of verifying the constant application of these principles, as well as their adequacy and updating, is entrusted by the Company to the Board of Directors and, as soon as possible, will also be entrusted to the Supervisory Board. The latter must be kept constantly informed and may be asked for opinions and guidance.

For an analysis of the Model's verification activities, please refer to the following chapters.

Supervisory Board

Identification

Pursuant to the law, the Supervisory Board (hereinafter also referred to as 'SB') has the task of supervising the application of the Legislative Decree. 231/2001.

Moreover, the effective implementation of the OMC also depends on the establishment and monitoring of the Supervisory Board itself.

It is, in fact, responsible for

- a) Supervise the operation of and compliance with the *compliance programme*;
- b) Take care of the updating of the latter.

The Supervisory Board also has autonomous powers of initiative and control (Article 6(1)(b)) and at the same time is the beneficiary of obligations to provide information on sensitive transactions (Article 6(2)(d)).

This body cannot be identified in the management body, which only has propositional and supervisory powers.

Similarly, its function cannot be correctly performed exclusively by staff employed by the entity since the latter, placed in functional dependence on the Board of Directors, may not boast the condition necessary to ensure its effective independence from the top bodies.

The function must in any case be attributed to a body located in a high hierarchical position within the corporate organisational chart, emphasising the need for this position to be accompanied by the non-attribution of operational tasks which, by making this body a participant in operational decisions and activities, would 'pollute' its objectivity of judgement when verifying conduct and the Model.

The Supervisory Board is a figure that reports directly to the top management of the Company, both operational and controlling, so as to guarantee its full autonomy and independence in the performance of the tasks entrusted to it. Fundamental is its continuity of action.

Fresh Ways S.r.l. decided, when promulgating the OMCM, to confer the status of Supervisory Board to a single-member body whose member is appointed by the management body and identified from among persons outside the Company, particularly qualified and experienced in the matters relevant to the Legislative Decree. 231/2001, so as to ensure that the Supervisory Board has adequate expertise in the fields of legal, accounting, *risk assessment*, *auditing* and labour law, as well as possessing the requisites of integrity required by law.

However, FRESH WAYS S.R.L., reserves the right as of now to vary the form and composition of its Supervisory Board.

This body - whatever its composition - must be independent of it, i.e:

- a. must not be linked to the Company, to its parent company or to any of its subsidiaries and/or investee companies, by an employment relationship or by commercial or patrimonial relations implying, with reference to the areas of competence of the Supervisory Board, potential conflicts of interest;
- b. must not be related to shareholders or directors of the Company, its parent company or its subsidiaries and/or investees such as to reduce their independence of judgement;
- c. must not be bound in any way, for any reason whatsoever, to the Company, its parent company or any of its subsidiaries and/or affiliates by ties of dependence or subordination.

It should be noted that the Supervisory Board:

1. reports directly to the Board of Directors;
2. is endowed with autonomous powers of intervention in its areas of competence. To this end, as well as to ensure the continuous performance of the activity of verifying the adequacy and suitability of the Model, the Supervisory Board makes use of internal staff and/or external collaborators;
3. has its own 'rules of operation' drawn up by it;
4. has an annual expenditure *budget* , for its exclusive use, decided by the Administrative Body. The Supervisory Board decides autonomously and independently on the expenses to be made within the limits of the approved *budget* and refers to those with signatory powers in Fresh Ways S.r.l. to sign the relevant commitments. In the event of a request for expenditure exceeding the approved

budget, the Supervisory Board must be authorised by the President within the limits of his delegated powers or directly by the Board of Directors.

The Supervisory Board is appointed for a period of three (3) years.

The Supervisory Board meets at least once every four months and in any case as resolved by it in its 'rules of operation'.

For the purposes of a better knowledge and proper monitoring of the corporate context, the Supervisory Board may request the presence - also on a permanent basis - at its meetings of persons such as, by way of example, the heads of those corporate functions having a bearing on control issues. These attend meetings exclusively as guests.

These are causes of incompatibility with the office of Supervisory Board:

1. be a member with operational powers of the Board of Directors of Fresh Ways S.r.l. (i.e. being a Director), of the parent company or of companies that may be controlled and/or participated by FRESH WAYS S.R.L.;
2. being an auditor of Fresh Ways S.r.l. or of Companies possibly controlled and/or participated by FRESH WAYS S.R.L.;
3. be related by marriage, kinship or affinity up to the fourth degree with the persons referred to in the preceding points;
4. having carried out, in the last three years, functions of administration, management or control in undertakings subject to bankruptcy, compulsory administrative liquidation or similar procedures;
5. having been convicted by a judgment, even if not irrevocable, of:
 - a. custodial sentence entailing disqualification, including temporary disqualification, from public office or temporary disqualification from the executive offices of ordinary legal persons;
 - b. prison sentence for having committed one of the offences provided for in Legislative Decree no. 231/2001;
6. having been the addressee of a sentence *pursuant to* Article 444 of the Code of Criminal Procedure for having committed one of the offences provided for in Legislative Decree no. 231/2001.

In order to protect its autonomy and independence, changes to the structure (appointment, revocation, etc.), powers and functioning of the Supervisory Board may only be made by resolution of the Board of Directors with a unanimous and adequately motivated vote.

The removal of the Supervisory Board can only occur for just cause.

In this regard, just cause shall mean:

1. a serious breach of their duties, as defined in the Model;
2. a conviction of the Company or a plea bargaining sentence pursuant to the Decree, showing 'omitted or insufficient supervision' by the Supervisory Board;
3. a conviction or plea bargain issued against the Supervisory Board for having committed one of the offences provided for in the Legislative Decree 231/2001 and offences of the same nature;
4. breach of confidentiality obligations.

In all cases of the precautionary application of a disqualification sanction provided for in the Decree, the Board of Directors, after having obtained the appropriate information, may, if necessary, revoke the Supervisory Board, if it detects a case of omitted or insufficient supervision on its part.

In the event that the requisites of autonomy, independence and professionalism are no longer met, or in the event of the occurrence of one of the causes of ineligibility identified above, the Board of Directors, after carrying out the appropriate checks and consulting the Supervisory Board, establishes a term, not less than thirty days, within which the situation of incompatibility must cease. After this period has elapsed without the aforementioned situation having ceased to exist, the Board of Directors must declare the disqualification of the SB.

Similarly, a serious infirmity that renders the Supervisory Board unfit to perform its supervisory functions, or an infirmity that, in any case, leads to absence from the Supervisory Board's activities for a period of more than six months, will lead to its disqualification, to be implemented in accordance with the procedures set out above.

In the event of resignation, revocation or disqualification of the Supervisory Board, the Board of Directors shall appoint a replacement in a timely manner.

Requirements

a) Autonomy and independence

Autonomy and independence are intended to ensure that the Supervisory Board is not directly involved in the management activities that are the subject of its control activities and, above all, that it is able to perform its role without direct or indirect influence from controlled entities. These requirements can be achieved by ensuring that the Supervisory Board is hierarchically dependent and *reports* directly to the top management, i.e. the Board of Directors.

b) Professionalism

The Supervisory Board is a body with technical and specialist skills appropriate to the functions it is called upon to perform (e.g. interview techniques, *flow charting*, risk analysis techniques, etc.). These characteristics combined with independence guarantee objectivity of judgement.

c) Continuity of action

The Supervisory Board is an internal body of the organisation, adequate in terms of structure and dedicated resources, as well as lacking operational tasks that could limit the commitment required to perform the assigned functions.

In order to endow the Supervisory Board with the appropriate capacity to obtain information and thus to act effectively vis-à-vis the corporate organisation, the information flows to and from the Supervisory Board are established, by means of this Model and, subsequently, by means of specific internal organisational documents issued by the Board of Directors or the Supervisory Board.

Functions and powers

The Supervisory Board of Fresh Ways S.r.l. will be entrusted with the general task of supervising:

1. compliance with the provisions of the Model by the addressees in relation to the different types of offences covered by the Decree;
2. on the effectiveness, efficacy and adequacy of the Model in relation to the corporate structure and its effective capacity to prevent the commission of the offences referred to in the Decree;
3. on the appropriateness of updating the Model, where there is a need to adapt it in relation to changed business conditions;

4. on the adequacy, application and effectiveness of the penalty system.

The Supervisory Board will be entrusted, on an operational level, with the task of

1. implement the control procedures laid down in the Model;
2. constantly verify the effectiveness and efficiency of the corporate procedures in force, with the help of the competent Functions, as well as of the persons having safety responsibilities with regard to issues concerning the environment, hygiene, health and safety of workers;
3. conducting reconnaissance of the company's activities in order to update the mapping of sensitive activities and instrumental processes;
4. periodically carry out targeted checks on specific operations or acts carried out, in particular, in the context of sensitive activities or 'instrumental' to their implementation;
5. coordinating with the heads of the Functions in charge of training for staff training programmes;
6. monitor initiatives for the dissemination of knowledge and understanding of the Model, the preparation of internal documentation necessary for the functioning of the Model, containing instructions, clarifications or updates; the Supervisory Board must in its ongoing activity implement and apply operational procedures for the best formal management of the activity;
7. collecting, processing and storing relevant information concerning compliance with the Model, as well as updating the list of information that must be transmitted to him or kept at his disposal, constituting the 'formal' *database* of internal control activities;
8. coordinating with the other corporate functions in carrying out the monitoring activities falling within their competence and provided for in the protocols;
9. verify the adequacy of the internal control system in relation to the regulations in force;
10. verify that the elements provided for the implementation of the Model (adoption of standard clauses, completion of procedures, etc.) are in any case adequate and meet the requirements of compliance with the provisions of the Decree, adopting or suggesting the adoption, if this is not the case, of an update of the elements themselves;
11. verify the need to update the Model;

12. report periodically to the Board of Directors on the company policies necessary for the implementation of the Model;
13. monitor the actual presence, regular maintenance and effectiveness of the *databases* supporting the activities *under the* Legislative Decree. 231/2001.

Since the Company is not among the addressees, punctually listed in Articles 10 et seq. 231/2007 on the subject of anti-money laundering, the Supervisory Board is not subject to the reporting duties laid down in Article 52 of the same decree.

However, should it become aware, in the course of its activities, of sensitive incidents with respect to the types of offences envisaged in Article 25-octies of Legislative Decree No. 25. 231/2001, the Supervisory Board is required to promptly assess the situation and take any action it deems appropriate (communications to the Administrator, activation of the sanctions system, etc.).

This is without prejudice, in any case, to the application of the control protocols on receiving stolen goods, money laundering and use of money, goods or benefits of unlawful origin set out in this Model.

For the purpose of performing the above tasks, the Supervisory Board is vested with the powers set out below:

1. issue provisions to regulate the activities of the Supervisory Board;
2. access to any and all company documents relevant to the performance of the functions assigned to the Supervisory Board pursuant to Legislative Decree No. 231/2001. 231/2001;
3. make use of external consultants of proven professionalism in cases where this is necessary for the performance of verification and control activities or for updating the Model;
4. order that the heads of company functions provide the information, data and/or news requested from them in a timely manner in order to identify aspects connected to the various company activities relevant to the Model and to verify its effective implementation by the company organisational structures.

Modalities and frequency of reporting to corporate bodies

The Supervisory Board of Fresh Ways S.r.l. operates according to two *reporting* channels:

1. on an ongoing basis with the company contact persons identified as *key officers*;
2. annually by means of written *dossiers* on its activities for the management body.

The presence of the aforementioned relations of a functional nature, even with bodies that have no operational tasks and are therefore free from management activities, constitutes a factor capable of ensuring that the task is performed by the Supervisory Board with the greatest guarantees of independence.

The Supervisory Board may be convened at any time by the Board of Directors or may itself submit requests to that effect, to report on the functioning of the Model or on specific situations.

Moreover, the Supervisory Board may address communications to the Board of Directors whenever it deems it necessary or advisable and, in any case, it must forward to them on an annual basis the aforementioned report of an informative nature, concerning the subject matter:

1. the supervisory activity carried out by the Supervisory Board during the reporting period;
2. any criticalities that have emerged both in terms of conduct or events within the Company and in terms of the effectiveness of the Model;
3. the suggested corrective and improvement actions and their status of implementation.

Meetings with the above-mentioned persons and bodies must be minuted, and copies of the minutes will be kept by the Supervisory Board and the bodies involved from time to time.

Other Activities

The Supervisory Board must coordinate with the competent functions within the company for the various specific profiles, namely:

1. with the Managing Director and/or the Board of Directors for corporate obligations that may be relevant to the commission of corporate offences;
2. with the head of the company organisation with regard to the dissemination of information, with regard to staff training and with regard to the possible initiation of disciplinary proceedings;
3. with the Health and Safety Manager (RSPP) for compliance with all regulations laid down by law and internal company procedures on health, safety and hygiene at work;
4. with any other Function deemed relevant to its activities from time to time.

Methods of managing financial resources

The Supervisory Board directs *management* to make appropriate additions to the management systems of financial resources (both incoming and outgoing) with possible arrangements designed to comply with Legislative Decree No. 231/2001. 231/2001 (e.g. detection of anomalies in particular transactions or payments of consideration that are not justified by the economics of the transaction with a view to ascertaining whether they do not conceal extra-accounting items or corrupt hypotheses) and with a view to detecting the existence of atypical financial flows characterised by greater margins of discretion than those normally provided for.

All transactions involving atypical or unusual activities or services must be specifically and clearly justified and communicated to the Supervisory Board.

The system for the management of financial resources must ensure the separation and independence between those who contribute to forming decisions on the use of resources, those who implement those decisions, and those entrusted with controlling their use.

For the implementation of employment decisions, the company uses financial and banking intermediaries subject to transparency and stability regulations in line with those adopted in the EU Member States.

All operations involving the use or deployment of financial resources must have an adequate reason and must be documented and recorded, by manual and computerised means, in accordance with the principles of professional and accounting correctness; the relevant decision-making process must be verifiable in the first instance by the Administration and Finance Department of FRESH WAYS S.R.L.

Information flows to control bodies

Reporting obligations to the Supervisory Board

Within the company, Fresh Ways S.r.l. function heads must inform the Supervisory Board:

1. on a periodical basis and according to specific indications and/or requests of the Supervisory Board, information, at the level of its own operational area, useful for the exercise of the activity of the Supervisory Board in terms of verification of compliance, effectiveness and updating of this Model, as well as any other information identified by the Supervisory Board and requested by the latter to the individual organisational and managerial structures of Fresh Ways S.r.l. through internal directives. This information must be transmitted at the times and in the ways to be defined by the Supervisory Board itself; similarly, the competent functions must transmit to the Supervisory Board periodic reports on specific topics (e.g. in relation to processes linked to particular sensitive activities) and on any procedural exceptions where they intend to collect the opinion of the Supervisory Board;
2. on an occasional basis, any other information, of any kind, also coming from third parties and pertaining to the implementation of the Model in the areas of 'sensitive' activities and compliance with the provisions of the Decree, which may be deemed useful for the performance of the tasks of the Supervisory Board. In particular, by way of example but not limited to, information concerning the following must be mandatorily and promptly reported to the body:
 - a. decisions concerning the application for, disbursement and use of public funds;
 - b. requests for legal assistance made by managers and/or employees against whom the judiciary is prosecuting offences;
 - c. measures and information from judicial police bodies, or any other authority, from which it can be inferred that investigations are being carried out, even against unknown persons, for predicate offences;
 - d. commissions of enquiry or internal reports from which responsibility for alleged offences emerges;
 - e. news concerning the effective implementation, at all levels of the company, of the OMCM, with evidence of disciplinary proceedings carried out and any sanctions applied or orders to dismiss such proceedings with the relevant reasons;

- f. the results of the (preventive and subsequent) checks carried out during the reference period on contracts awarded to market operators, following national and European tenders or by private treaty;
- g. copies of periodic reports on health and safety at work;
- h. reports prepared by the heads of other corporate functions as part of their control activities, from which facts, acts, events or omissions may emerge that are critical with respect to compliance with the provisions of Legislative Decree no. 231/2001. 231/2001;
- i. the updating of the proxy system of FRESH WAYS S.R.L.
- j. implementations of company procedures and processes;
- k. renewal and/or non-renewal of company certifications.

The reporting obligations on an occasional basis are also addressed to third parties operating, in any capacity whatsoever, on behalf of or in the interest of the Company in the context of corporate activities at risk, to whom the Company shall provide adequate information on the Organisational Model adopted.

With regard to the way alerts are transmitted, the following requirements apply:

1. information and reports received from anyone, including those concerning any violation or suspected violation of the Model and its general principles, must be made in writing. The Supervisory Board acts in such a way as to guarantee the authors of the reports against any form of retaliation, discrimination or penalisation or any consequence deriving therefrom, assuring them of the confidentiality of their identity, without prejudice to legal obligations and the protection of the rights of Fresh Ways S.r.l. or of the persons wrongly accused and/or in bad faith;
2. the information and reports must be sent by the person concerned directly to the Supervisory Board; the right to initiate further reports under the provisions of other corporate channels (e.g. reporting systems at Group level) does not result in the termination of the reporting obligations towards the Supervisory Board;
3. the Supervisory Board assesses the reports received and any consequent measures at its reasonable discretion and responsibility, hearing, if necessary, the author of the report and/or the person responsible for the alleged breach, and adopts any measures deemed necessary for the purposes of adapting the Model, taking the necessary steps for the application of any sanctions. It must justify

in writing the reasons for its decisions and any refusal to carry out an internal investigation. Any consequent measures are applied in accordance with the provisions of the sanctions system set out in the following chapter;

4. all the recipients of the reporting obligations are required to cooperate with the Supervisory Board, in order to allow the collection of any further information deemed necessary by the body for a correct and complete assessment of the report. Failure to cooperate or reticence may be considered a violation of the Model with the consequences envisaged also in terms of disciplinary sanctions.

It should be noted that the Supervisory Board is not obliged to act every time a report is made, since it is left to its discretion and responsibility to decide whether to act and take action.

Dedicated information channels are set up within the specific corporate procedures by the Supervisory Board, with the dual function of facilitating the flow of information and reports to the body and quickly resolving uncertain and doubtful cases.

The obligation to inform generally applies to all personnel who come into possession of information concerning the commission of offences or conduct not in line with the rules of conduct.

Lastly, it should be noted that the information flows referred to in this chapter may also be collected directly by the Supervisory Board in the course of its periodic control activities, through the methods that the Supervisory Board deems most appropriate.

The collection and storage of information

All information, notifications, *reports* sent to the Supervisory Board is stored by the latter in a special *database* (computerised or on paper) for a period of 10 years.

Access to the *database* is allowed not only to the Supervisory Board, but also to the Board of Directors, upon formal request to the Supervisory Board.

The disciplinary system

General Principles

A crucial aspect of the construction of the OMC 231 is the provision of an adequate disciplinary and sanctioning system for violations of the Model and the procedures therein.

See how pursuant to Art. 6(2)(e) and Art. 7(4)(b) of Lgs. 231/2001, the Organisational, Management and Control Models, the adoption and implementation of which (together with the other situations provided for in the aforementioned Articles 6 and 7) constitute a condition *sine qua non* for the Company's exemption from liability in the event of the commission of the offences referred to in the Decree, can only be considered effectively implemented if they provide for a disciplinary system capable of sanctioning non-compliance with the measures indicated therein.

This disciplinary system must address both employees and collaborators and third parties working on behalf of the Company, providing for appropriate sanctions of a disciplinary nature in the one case, and of a contractual/negotiation nature (e.g. termination of contract, removal from the supplier list, etc.) in the other case.

The application of disciplinary sanctions is irrespective of the initiation or outcome of any criminal proceedings, since the organisational models and internal procedures constitute binding rules for the addressees, the violation of which must, in order to comply with the dictates of the aforementioned Legislative Decree, be sanctioned irrespective of whether an offence is actually committed or whether it is punishable. The principles of timeliness and immediacy of the sanction make it not only unnecessary but also inadvisable to delay the application of the disciplinary sanction pending the criminal trial.

Sanctions for employees of FRESH WAYS S.R.L.

This Organisational Model constitutes to all intents and purposes a company regulation as an expression of the employer's power to issue provisions for the execution and discipline of work, and insofar as it is available in a place accessible to all, it shall also constitute a disciplinary code.

The persons to whom these regulations are therefore directed are obliged to fulfil all the obligations and prescriptions contained herein and to conform their conduct to the conduct described herein. Without prejudice to the right to compensation for damages, any breach of these obligations shall be subject to disciplinary sanctions in accordance with the proportionality between the sanction and the breach and in compliance with the procedure provided for in Art. 7 of Law No. 300 of 20 May 1970 as well as the applicable CCNL.

Verbal warning or reprimand

The measure of "verbal warning" or "written warning" shall be applied to any worker who commits minor actions or omissions in disregard of the internal procedures laid down in this Model (e.g. fails to observe the prescribed procedures, fails to notify the Supervisory Board of the prescribed information, fails to carry out checks, etc.) or adopts, in the performance of activities in areas at risk, a conduct that does not comply with the provisions of the Model, since such conduct must be considered a violation of the provisions communicated by the Company.

Fine

The measure of "fine" may be imposed on any worker who repeatedly disregards the internal procedures laid down in this Model or adopts, in the performance of activities in areas at risk, a conduct that repeatedly fails to comply with the provisions of the Model, even before such failures have been individually ascertained and challenged, since such conduct must be considered as a repeated failure to apply the provisions communicated by the Company.

Suspension from service and pay

A worker shall incur the measure of "suspension from service and pay" if he/she disregards the internal procedures laid down in this Model or adopts, in the performance of activities in areas at risk, a conduct which does not comply with the provisions of the Model performs acts that expose the Company to an objective situation of danger or acts contrary to the interests of the Company that cause damage, since such conduct must be considered as the determination of a damage or a situation of danger for the integrity of the Company's assets or the performance of acts contrary to its interests equally deriving from the failure to comply with the prescriptions communicated by the Company.

Dismissal

The measure of "dismissal with indemnity in lieu of notice" shall be inflicted on any worker who adopts, in the performance of activities in areas at risk, a conduct that does not comply with the prescriptions of this Model and which leads to the commission of an offence provided for in the Decree, where such conduct causes considerable damage or a situation of considerable prejudice.

Dismissal (without notice)

Any worker who adopts, in the performance of activities in areas at risk, a conduct that is clearly in breach of the provisions of this Model and such as to determine the concrete application against the Company of the measures laid down in the Decree, may incur the measure of "dismissal without notice", since such conduct must be construed as the performance of acts that radically undermine the Company's trust in him/her, or as the occurrence of the breaches referred to in the preceding points, resulting in serious prejudice to the Company.

Criteria for the application of sanctions

The type and extent of each of the above-mentioned sanctions will be applied, in accordance with the provisions of the applicable CCNL, in relation to:

1. the intentionality of the conduct or degree of negligence, recklessness or inexperience with regard also to the foreseeability of the event;
2. the worker's overall conduct, with particular regard to whether or not he or she has a disciplinary record, to the extent permitted by law;
3. to the worker's duties;
4. the functional position of the persons involved in the facts constituting the offence (in particular, in the case of an offence committed by persons subordinate to the management of others, it will be necessary to verify and, where appropriate, penalise the breach by senior persons of their specific obligation to supervise subordinates);
5. the other particular circumstances accompanying the disciplinary breach.

The ascertainment of the aforementioned infringements, possibly on the report of the Supervisory Board, the management of disciplinary proceedings and the imposition of sanctions remain the responsibility of the competent functions.

In particular, as regards managerial staff, in the event of violation of the general principles of the Organisational Model or of company procedures, the body competent to detect infringements and apply sanctions is the Board of Directors or the person or body delegated by it, which will take the measures deemed appropriate and proportionate to the infringements committed against those responsible, taking into account that such infringements constitute breaches of the obligations and prescriptions arising from the employment relationship.

Measures against senior persons

In the event of any breach of the applicable legislation and of the Organisational Model by the Company's Directors, the Supervisory Board shall inform the entire Board of Directors, which shall take the appropriate initiatives pursuant to the law, involving, where necessary, the Shareholders' Meeting.

Possible disciplinary measures applicable against apical persons are: a written warning, temporary suspension mechanisms or, for the most serious violations, disqualification/revocation from any corporate office held. The latter may be envisaged as automatic or be subject to a resolution of the Board of Directors.

With specific regard to the position of directors, the disciplinary system will be integrated with the typical instruments provided for by company law (primarily liability actions).

Measures against third parties

Any conduct by collaborators, consultants or third parties connected to the Company by a non-employee contractual relationship, in breach of the provisions of Legislative Decree no. 231/2001, may lead to the application of penalties or, in the event of serious breach, to the termination of the contractual relationship, without prejudice to any claim for compensation if such conduct causes damage to the Company, even independently of the termination of the contractual relationship.

To this end, with particular attention to the activities *outsourced* to third parties, the inclusion in contracts of specific clauses that at least acknowledge the third party's knowledge of the Decree, require the assumption of a commitment by the third party contractor and by the latter's employees and collaborators to refrain from conduct liable to give rise to the offences referred to in the Decree and to adopt appropriate control systems (regardless of whether the offence has actually been committed or is punishable) and governing the consequences in the event of violation of the provisions of the clause; or a unilateral declaration of 'certification' by the third party or collaborator that they are aware of the Decree and that they are committed to conducting their activities in compliance with the provisions of the law.

Training, information and periodic reviews of the model

Training and information

For the purposes of the effectiveness of this Model, it is the objective of Fresh Ways S.r.l. to ensure proper dissemination and knowledge of the rules of conduct contained herein to the resources already present in the company and to those to be hired, with a different degree of detail in relation to the different level of involvement of those resources in risk activities.

The ongoing information and training system is supervised and supplemented by the activity carried out in this field by the Supervisory Board, which oversees the activity by working in cooperation with the heads of the functions involved in the application of the Model from time to time.

This Model is communicated to all resources in the company at the time of its adoption. To this end, a dedicated sharing space (e.g. company network *share*) is set up and updated by the Supervisory Board, in which documents describing the Model reside.

New employees are given an informative document (in paper or electronic format), including the Model, with which they are assured of the knowledge considered of primary importance. The Model is publicly posted on the company notice board.

All employees⁷ of the Company who hold roles that are not merely operational but characterised by conceptuality and autonomy are also required to complete a formal 'declaration of commitment', in the written or electronic form deemed most appropriate, which, by way of example, could read as follows

Declaration of commitment issued by the employee

I, the undersigned _____ declare that:

⁷ In the opinion of the Company, only those employees required to make a declaration of commitment may be excluded from the list of employees assigned to operational tasks that may not involve the performance of sensitive activities for the purposes of Legislative Decree No. 231/2001. 231/2001. Also for these employees, it is emphasised that this Organisational Model constitutes to all intents and purposes a company regulation as an expression of the employer's power to issue provisions for the execution and discipline of work, and insofar as it is available in a place accessible to all, it will also constitute a disciplinary code.

1. I have received a copy of the Organisation, Management and Control Model (hereinafter referred to as the "Model"), adopted by the Company, as well as a copy of Legislative Decree No. 231 of 8 June 2001 (hereinafter referred to as the "Legislative Decree"). 231/2001");

2. I have carefully read the Model and the D. Lgs. 231/2001;

3. I undertake to observe the prescriptions contained therein.

That being said, I declare that I have understood the contents of the Model and the Legislative Decree. 231/2001.

Date

Signature

The training activity, aimed at disseminating knowledge of the regulations set out in Leg. 231/2001, is differentiated in content and delivery methods according to the qualification of the recipients, the risk level of the area in which they operate, and whether or not they have a representative function for the Company.

This is the task of the Management:

- provide for the definition of an annual update programme to be shared with the Supervisory Board, which, in accordance with the provisions of the Model, includes a specific course of action for management and subordinate personnel;
- prepare an annual schedule to be communicated, together with the summary content of the programme, to the Supervisory Board.

Conversely, the Supervisory Board shall inform the Management about

- amendments to the relevant regulations so as to provide for additional training;
- need for additional training actions resulting from the detection of errors and/or deviations from the correct execution of operational procedures applied to the so-called 'sensitive activities'.

The control activity referred to in the 'Work Plan of the Supervisory Board's control activity' provides for the adoption of training actions when errors and/or deviations from the correct execution of procedures that

are 'sensitive' with respect to the offences referred to in Legislative Decree No. 231/2001 are detected. 231/2001.

In this case, the Supervisory Board will activate the relevant company manager for the organisation and execution of the planned training action.

Periodic Model Checks

Supervisory activities are carried out continuously by the Supervisory Board in order to

- 1) verify the effectiveness of the Model (i.e. the consistency between the concrete conduct of the addressees and the Model itself);
- 2) carry out the periodic assessment of the adequacy, with respect to the requirements of prevention of the offences referred to in the Legislative Decree. 231/2001, of codified procedures governing activities at risk;
- 3) proceed to the appropriate updates of the Model, is embodied, *first and foremost*, in the Supervisory Board's Control Activity Work Plan.

The control system is designed to:

1. ensure that the operational management methods meet the requirements of the Model and the applicable legal provisions;
2. identify areas in need of corrective action and/or improvement and verify the effectiveness of corrective actions;
3. develop, within the company, the culture of control, also in order to better support any inspection visits by other parties delegated, in various capacities, to audit activities.

Internal audits are managed by the Supervisory Board. In order to carry out the planned verification activities, the Supervisory Board may avail itself of the collaboration of personnel from other functions, not involved in the verified activities, with specific competences, or of external consultants.

The Work Plan 'covers' one year (period January - December of each fiscal year) and indicates for each controlled activity:

1. the periodicity of carrying out verifications;
2. sample selection;

3. information flows (information flow from the operational staff to the Supervisory Board) defined for each control carried out;
4. the activation of training actions (activities to resolve procedural and/or information deficiencies) for each anomaly detected.

The business areas to be checked and the frequency of checks depend on a number of factors such as:

1. risk *ex D. Lgs. 231/2001*, in relation to the outcome of the mapping of sensitive activities;
2. evaluation of existing operational controls;
3. findings of previous *audits* .

Extraordinary controls not included in the 'Work Plan' are planned in the event of substantial changes in the organisation or in some process, or in the event of suspicions or communications of non-compliance, or in any case whenever the Supervisory Board decides to implement occasional *ad hoc* controls.

The results of the controls are always recorded and *reported* in the prescribed manner and periodicity of *reporting*.