

**MODEL  
FOR ORGANISATION, MANAGEMENT AND  
CONTROL**

AS PER LEGISLATIVE DECREE No. 231 OF 8 JUNE 2001

**GENERAL SECTION**

**Biffi Italia S.r.l.**

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**INTRODUCTION**

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## GENERAL SECTION

### 1. Legal aims and principles

#### 1.1 Legislative Decree no. 231 of 8 June 2001

Legislative Decree no. 231 of 8 June 2001 governs the "*Regulation of the administrative liability of corporate bodies, companies and associations with no legal status*" (hereinafter, Decree 231), has given immediate implementation to the legislative delegation contained in Article 11 of law no. 300 dated the 29 September 2000, in which Parliament has established directive principles and criteria for the regulation of the administrative liability of corporate bodies and entities lacking in legal status, for offences committed by persons operating within the organisation, in the interest or to the advantage of the entity itself.

This solution has emerged from a series of INTERNATIONAL CONVENTIONS for which Italy has been a signatory over the past few years. In particular, this concerns the Convention on the protection of the financial interests of the European Community, signed in Brussels on 26 July 1995; of its first protocol drafted in Dublin on 27 September 1996; of the protocol concerning the interpretation of this Convention via a preliminary ruling by the Court of Justice for the European Community, signed in Brussels on 29 November 1996, as well as the Convention in relation to the fight against corruption in which officials from the European Community are involved, drafted in Brussels on 26 May 1997 and of the OCSE Convention on the fight against corruption of foreign public officials in international financial operations, with an addendum, drafted in Paris on 17 December 1997.

Decree 231 has included within Italian legislation, a principle of administrative liability for an offence as a consequence of crimes committed by those who act for and on behalf of the entity being represented, that is to say:

- a) persons having representative, administrative or managerial positions within the entity or one of their organizational units (financially and functionally independent) or who undertake, also de facto, the management and control of the entity;
- b) persons subject to the management or supervision of one of the persons as per letter *a*.

To the traditional liability for the offence committed (personal criminal liability, which may only refer to individuals in virtue of the principle contained in Article 27 paragraph 1 of the Constitution and of its mirrored dogma enshrined in the maxim *societas delinquere non potest* (*companies cannot commit a criminal offence*) and other forms of liability arising from the offence, the liability of the corporate body is now added to this, which leads to sanctioning consequences that differ according to the person who is held liable. The deed

constituting an offence, where the conditions specified within legislation occur, operates on a two-fold basis, in that it simultaneously integrates, both the offence that is ascribable to the individual who has committed it (offence punished with a criminal sanction), as well as the administrative offence (offence punished by an administrative sanction) for the entity.

Within the Italian context, the novelty value of Decree 231 is indisputable. Prior to the coming into force of this legislation, there was only a civil obligation scheduled for the entity for the payment of fines or penalties, but only in the case of the insolvency of the perpetrator of the offence (Articles 196 and 197 of the criminal code), whilst there did not exist any consequence for the entity (except for the possible assumption of compensation for the damage) where the directors and/or employees should have committed offences, which resulted in a profit or an advantage to the benefit of the entity.

As to THE NATURE OF THE LIABILITY disclosed by Decree 231, despite the definition of *administrative liability*, which appears in the title of the decree, the measures that reveal a legislative base that is substantially criminal for the entire legislative *body*, are different. Symptomatic of this in the first place, is the arrangement of the liability of the entity subject to the commission of an *offence* for which the entity is independently liable, if it has been committed in their interest or to their advantage, by persons who are variously placed within the organisation of the entity (Article 6), who are made liable for this conduct as a result of a culpable disorganisation supported by the non-observance of the obligations of management or supervision (Article 7). The suggestion of a meaning that is substantially criminal for the liability, is also due to the attribution of jurisdiction being given to the criminal magistrate, who will adhere to criminal procedure rules where these do not expressly detract from Decree 231. Furthermore, the entity will enter into the process assuming a *status* that is absolutely equal to that of the accused whose trial procedures are extended to the entity, in as much as they are compatible (Article 35). Finally, symptomatic of the criminal matrix of the legislation, is the attempt to personalise the sanction, also in relation to events that the entity modifies or extinguishes (Articles 28 and subsequent) in order to grade the punishment system for the criminality of the company, not only with pecuniary sanctions, but also with prohibitive sanctions, which could even lead to the definitive closure of the entity. And anyway except for the entity having the possibility of being "exonerated" from the liability or to obtain a temperment of the penalty-sanction interventions by implementing modifications, whether compensatory, or by showing a desire to reorganise the company structure with the adoption of organisation and management models (Article 6), which are suitable for filtering and avoiding criminally significant behaviour by those persons who are variously placed within the organisation of the entity.

Decree 231 is subdivided into four Chapters and it is made up of eighty five Articles. Chapter I is dedicated to the definition of the entity's structure of liability and this is made up in turn, of three Sections: the first sets out the general principles of guarantee and the rules for the validity of the system (Articles 1-4) furthermore,

defining the charge criteria for committing the offence against the entity (Articles 5-8); the second defines the sanction system, setting out the criteria for the commensuration of the different types of sanctions (Articles 9-23); the third includes the exhaustive list of the offences which might entail the administrative liability of the entity (Articles 24-26). Chapter II regulates the limits of liability in relation to the assets and the modifications by the entity (Articles 27-33); Chapter III outlines the trial provisions (Articles 34-82) changing them and reconciling them to the criminal process system and, finally Chapter IV is dedicated to the implementation and coordination procedures (Articles 83-85).

Decree 231 deals with defining the sphere of the RECIPIENT PARTIES of the legislative regulation, that is to say: "entities provided with legal status, companies and associations that are also lacking in legal status." This therefore concerns parties that have acquired legal status according to civil plans, that is associations, foundations and other institutions of a private sector nature, which have obtained recognition from the State; companies which have acquired legal status by means of registration in the company registry, as well as those entities that are not personified, lacking in capital independence, but perhaps able to be considered as legal subjects. The use of the very elastic expression "entity" is not casual, with regard to the more circumscribed notion of "corporate body", in order to include both the "corporate bodies" in a technical sense, as well as any other "company and association" even if they lack legal status, within the subject sphere of the regulation. This is aimed at establishing a liability that is not so much correlated to the distinction, the civil effects, between the capital of the corporate body and the capital of the physical individuals, as much as to stigmatise criminally significant behaviour by people who report to an organisation as such, even though this should be different from an individual entity.

However excluded from the array of the recipient parties of the code of administrative illegality related to offence, are: the State, the public and territorial bodies (Regions, Provinces, Communities and Mountain Communities), the non-profit public entities and, in general, all the entities that carry out functions of a constitutional significance (Chambers of Deputies, Senate of the Republic, Constitutional Court, Secretary General of the Presidency of the Republic, Superior Council of the Judiciary, State Institute of Economy and Labour).

Decree 231, in as much as it is characterised by a band that is typically criminal, has borrowed the GENERAL PRINCIPLE OF LEGALITY from the criminal system (Article 2) within its different areas of: legal reserve, obligatory nature (or determination of the type of offence), non-retroactivity and prohibition from analogy. The principle of legal reserve carries with it the prohibition of arranging the administrative liability of the entity in the absence of a specific legislative procedure, which means, not only the law in a formal sense, but also the

decree laws and the delegated laws. The principle of obligatory nature or determination of the type of offence, that is derived from the adverb "expressly" contained in Article 2, imposes that the cases of administrative liability of the entity and the sanctionary consequences are specifically determined in order to eliminate any arbitrary interpretations. The principle of non-retroactivity of the administrative sanctioning law, which includes the same principle as per Article 2 paragraph 1 of the criminal code – this entails that the law in force upon which the sanctions are pronounced, came into force before the commission of the offence. The last corollary of the principle of legality is the prohibition of analogy, which prevents recourse, where there is no regulatory law for the specific case, to procedures that regulate similar types of offence or similar material.

The profiles of the TERRITORIAL SPHERE of application of Decree 231, are tackled in Article 4, which specifies how in cases of: offences committed abroad (Article 7 of the criminal code); political crime committed abroad (Article 8 of the criminal code); common crime of the citizen abroad (Article 9 of the criminal code); common crime of the foreigner abroad (Article 10 of the criminal code), those entities which have their head offices in the territory of the State (for which specification is necessary in order to be realigned to the civil laws scheduled for corporate bodies and companies) are also liable in relation to offences committed abroad, provided that the State of the place in which the offence was committed does not proceed against them.

The subsequent Article 5 highlights the SUBJECTIVE CRITERIA OF CHARGES for administrative liability for the offence. The law schedules three conditions in the presence of which, it is permitted to re-direct the offence to the entity:

- the offence should have been committed in the interest or to the advantage of the entity;
- the subjects should be physical persons placed in managerial or subordinate positions;
- the subjects should not have acted in their own exclusive interest or the interest of third parties.

Articles 6 and 7 highlight the SUBJECTIVE CRITERIA OF CHARGES, in as much as, for the purposes of establishing the administrative liability for the offence, it is not enough to simply redirect, on an objective basis, the offence to the entity, but they must be able to formulate a judgement of reproach against the entity itself.

The parameters of liability of the entity are different according to the offence that is assumed to have been committed by persons placed in senior or subordinate positions. Article 6 outlines the profiles of liability of the entity in the event of offences committed by subjects in senior positions, as highlighted in Article 5 paragraph 1 letter a. The law introduces an assumption of inversion of the burden of proof for exemption of liability to the entity, under the presumption of a process of identification within the entity of the individuals to whom the task of expressing *voluntas societatis* (*the company's intention*) is entrusted. The entity could overcome this

presumption by adhering to proven topics that have been previously defined by the law under examination in paragraph 1, letters a, b, c, e, d. That is to say, the entity must prove that:

- organisation and management models that are suitable to prevent significant criminal behaviour of the same nature as that which the senior member of the company is liable for, have been adopted and efficiently implemented, before the commission of the offence;
- the task of supervising the function, observance and updating of these models has been entrusted to a body within the entity;
- the subjects, individuals, have been able to commit the offence because they have fraudulently eluded the models;
- there has been no omission or lack of vigilance by the entity's internal supervisory body.

As for the conditions that must occur, in order that the entity should be considered liable for the offences committed by the persons employed by them (Article 5 paragraph 1 letter b), Article 7, establishes generically that the liability of the entity originates from the lack of fulfilment of the obligations by management or supervision, these being the responsibility of the entity themselves. In any case, the entity is exonerated if, before the commission of the offence, they have adopted organisational models that are suitable at preventing offences of the same kind as those committed by the employee. Differently from that scheduled for the offence committed by the senior person, in this case, it is the responsibility of the prosecutor to prove the failed adoption and the inefficient implementation of the organisational models.

Section III of Chapter I of Decree 231 strictly outlines the catalogue of offences alleged, the commission of which could entail the administrative liability of the entity, if committed by a subject, their "agent" placed in a senior position or who is subject to the direction of other people.

Over the years, there has been a progressive expansion of this catalogue (originally limited to that set out by Articles 24 and 25), for which at least upon receipt of the content of the International Conventions, to which Italy has adhered, and which also schedule forms of liability of the collective entities.

In the original nucleus of the Section, coinciding with that set out **by ARTICLE 24**, are included the following offences against the Public Administrations:

- embezzlement to the detriment of the State (Article 316-*bis* of the criminal code);
- wrongfully obtaining provisions to the detriment of the State, from other public entities or the European communities (Article 316-*ter* of the criminal code);
- fraud to the detriment of the State or another public organisation (Article 640 paragraph 2 no. 1 of the criminal code);

- Serious fraud in order to obtain public funds (Article 640-*bis* of the criminal code);
- computer fraud if committed to the detriment of the State or another public entity (Article 640-*ter* of the criminal code);

*Public Administration* means public institutions, public officials and public service employees.

*Public institutions* mean for instance, the companies and administrations of the State, the Regions, the Provinces, the Communities and their consortiums and associations, university institutions, chambers of commerce, non-profit national, regional and local public entities, the administrations, the companies and the national health service entities. Public function is also covered by the members of the Commission for the European Community, the European Parliament, the Courts of Justice and the Court of Auditors for the European Community.

*Public official* means a public or private party, who agrees to carry out or carries out the wishes of the public entity or represents them abroad; a party furnished with authorisation and certification powers.

*Public service employee* means a person who, although carrying out a relevant activity for the State or another public entity, is not furnished with the usual powers of a public official and besides, does not carry out functions that are only material. For instance, the following hold the position of being in charge of a public service: ENEL collectors, postal workers employed in the sorting of correspondence, employees of the State Polygraph.

If these crimes are committed, the legislator has scheduled the application to the entity of pecuniary sanctions, commensurate up to five hundred shares, considering that the amount of each single share is established by the court, which will take the financial and capital conditions of the entity into account. The assumption of aggravation of the sanction is furthermore scheduled where the entity has achieved a profit of a significant size, or if by committing the offence, particularly serious harm has resulted.

In the presence of the general conditions scheduled by Article 13, only the least afflictive sanctions that are listed in Article 9 paragraph 2 letter *c*, *d* and *e*, will be applicable, that is to say:

- a ban on contracting with public administrations, except to obtain the services of a public service;
- exclusions of tax breaks, financing, contributions or grants (and the possible revoking of those already conceded) and a ban on publicising goods or services.

These sanctions may even be applied together for a duration of not less than three months and not greater than two years.

Article **24-BIS** was introduced by law no. 48 on 18 March 2008, ratified and executed by the Convention of the Council of Europe on IT criminality, drafted in Budapest on 23 November 2001, together with the increase of types of crimes triggered by the unavoidable use of computer systems (which includes IT and data processing systems, as well as programmes, information and other people's data) for undertaking company activities.

The text of the law, as well as modifying the criminal code and the criminal procedure code, has introduced new types of crime, regarding computer crimes and the illegal handling of data. These new predicate offences are:

- illegal access to a computer or data processing system (Article 615-*ter* of the criminal code);
- illegal interception, obstruction or interruption of computer or data transmission communication (Article 617-*quater* of the criminal code);
- installation of devices aimed at intercepting, preventing or interrupting computer or data transmission communications (Article 617-*quinquies* of the criminal code);
- damage of computer or data transmission systems (Article 635-*bis* of the criminal code);
- damage of information, data and computer programmes used by the State or another public entity or anyhow in the public service (Article 635-*ter* of the criminal code);
- damage of computer or data transmission systems (Article 635-*quater* of the criminal code);
- damage of a public service computer or data transmission system (Article 635-*quinquies* of the criminal code);
- each of the falsifications scheduled in Chapter III, Book II of the criminal code, if regarding a public or private computer document, which means any computer support document containing data or information having evidential effectiveness or programmes specifically aimed at creating them with evidential effectiveness (Article 491- *bis* of the criminal code);
- Computer fraud by the party who undertakes electronic signature certification services (Article. 640-*quinquies* of the criminal code).

Article 1 of the aforementioned Convention of Budapest, defines the concepts of *computer system* and of *computer data*. *Computer system* means "any apparatus, device, group of apparatus or devices, interconnected or connected, or more than these, on the basis of a programme, carry out the automatic processing of data". The concept of *computer data* is highlighted in reference to its use, i.e.: "any representation of facts, information, or concepts in a form that is suitable for processing with a computer system, including a programme that is able to permit a computer system to carry out a function."

The sanction system applied to these illegal administrative offences tends towards a homogenisation of the punitive response aimed at the entity (three "bands" of pecuniary sanctions are scheduled of five hundred,

three hundred and four hundred shares respectively, for the offences scheduled by paragraphs 1, 2 and 3 of the aforementioned legislation).

Article **25** will include the offences of extortion and corruption, so-called "proper" offences, in as much as they are only configured where the active party holds the position of a public official or is in charge of a public service. The law subdivides these offences into three categories in relation to the severity of the single criminal accomplishments.

The first category includes:

- corruption by an act of duty (Article 318 of the criminal code) in relation to assumptions of active corruption (Article 321 of the criminal code), as well as to assumptions of unwelcomed incitement to corruption (Article 322 paragraph 1 and 3 of the criminal code).

For the commission of these crimes, a pecuniary sanction up to a maximum of two hundred shares is applied to the entity; however the application of prohibitive sanctions is not scheduled.

The second category includes:

- corruption by an act contrary to official duties (Article 319 of the criminal code);
- simple corruption in legal proceedings (Article 319-*ter* of the criminal code) also including those hypotheses that pertain to the corrupter (Article 321 of the criminal code) and unwelcomed incitement to corruption (Article 322 paragraphs 2 and 4 of the criminal code).

For the commission of these offences, the application of a pecuniary penalty is scheduled, which ranges from a minimum of two hundred shares to a maximum of six hundred shares. Furthermore the prohibitive sanctions scheduled by Article 9 paragraph 2 may also apply, for a duration of no less than one year.

The third category includes:

- Extortion (Article 317 of the criminal code);
- corruption by an act that is contrary to official duties (Article 319 of the criminal code) aggravated when from the deed the entity has achieved a profit of a significant size (as per Article 319-*bis* of the criminal code);
- aggravated corruption in legal proceedings (Article 319-*ter* paragraph 2 of the criminal code) including the assumptions regarding the corrupter.

The sanction scheduled for these offences is a pecuniary sanction fixed in the measure of a minimum of three hundred shares up to a maximum of eight hundred shares. The pecuniary sanction may also be accompanied

by the prohibitive sanctions noted by Article 9 paragraph 2, which, should the conditions apply, may also be applied as a precaution (Article 45).

Finally, the fourth paragraph of Article 25 schedules an extension of the administrative liability of the entity if the offences indicated in the above described three categories, have been committed by: public employees, those in charge of a public service, members of the bodies of the European Community or officials of the European Community and foreign States.

Article **25-BIS**, introduced by Law no. 409 on 23 November 2001, conversion of legislative decree 350/2001 containing urgent measures in view of the Euro, concerns crimes on the subject of money counterfeiting, legal tender and revenue stamps. The offences listed here are:

- counterfeiting of money, spending and introduction into the State, in complicity, of counterfeit money (Article 453 of the criminal code);
- alteration of money (Article 454 of the criminal code);
- the spending and introduction within the State, without complicity, of counterfeit money (Article 455 of the criminal code);
- spending of counterfeit money received in good faith (Article 457 of the criminal code);
- falsification of revenue stamps, introduction into the State, acquisition, possession or placing into circulation of counterfeit revenue stamps (Article 459 of the criminal code);
- counterfeiting of watermarked paper used to produce legal tender or duty stamps (Article 460 of the criminal code);
- manufacture or possession of watermarks or instruments designated for counterfeiting money, revenue stamps or water-marked paper (Article 461 of the criminal code);
- use of counterfeit or altered revenue stamps (Article 464 of the criminal code).

The last paragraph of the recalled law schedules the joint applicability of the pecuniary penalty (according to the various bands of severity) with prevention measures, with the only exclusion of applicability of the latter being for the types of criminal offences scheduled and punished by Articles 457 and 464 of the criminal code).

Legislative Decree 61/2022 on the regulation of the illegal criminal and administrative offences regarding commercial companies, has added **ARTICLE 25-TER** to Decree 231, extending the administrative liability of the entities to some of the types of company offences committed in the interest of (there is a lack of any reference to the advantage achieved by the entity with regard to the structure of the other crimes) the company by administrators, managing directors, liquidators or persons who are subject to their supervision, that the deed

would not have been committed, if these had supervised in compliance with the obligations inherent to their position.

The following offences have been included:

- false company information (Article 2621 of the civil code);
- false company communications to harm the shareholders or creditors (Article 2622 paragraphs 1 and 3 of the civil code);
- falsification of statements (Article 2623 of the civil code, repealed by Article 34 of Law no. 262 of 28 December 2005, which has anyway introduced Article 173-bis of Legislative Decree no. 58 of 24 February 1998);
- falsification in reports or information disclosed by auditing companies (Article 2624 of the civil code);
- obstruction of auditing (Article 2625 paragraph 2 of the civil code);
- unlawful return of capital contributions (Article 2626 of the civil code);
- illegal allocation of profits and reserve funds (Article 2627 of the civil code);
- unlawful transactions on the shares or on the quotas of the company or of its parent company (Article 2628 of the civil code);
- transactions to the detriment of creditors (Article 2629 of the civil code);
- failure to disclose conflict of interests (Article 2629 *bis* of the civil code);
- fictitious capital formation (Article 2632 of the civil code);
- undue distribution of corporate assets by the receivers (Article 2633 of the civil code);
- unlawful influence on the shareholders' meetings (Article 2636 of the civil code);
- market manipulation (Article 2637 of the civil code);
- preventing public supervisory authorities from performing their duties (Article 2638 of the civil code).

With regard to the sanction system, beyond the usual technique of measuring the pecuniary sanction, according to the increasing severity of the criminal instances listed, the non-applicability is to be noted, for these types of offences, of the prohibitive sanctions as per Article 9 paragraph 2.

Article **25-QUATER**, introduced by law no. 7 on 14 January 2003 for "*The ratification and execution of the International Convention for the repression of finance for terrorism*" drafted in New York on 9 December 1999, establishes the administrative liability of the entity in relation to the commission of offences aimed at terrorism or the subversion of the democratic order. The law is also applied in the assumption of offences being

committed, that are different from those being recalled, that have been committed in violation of that scheduled in Article 2 of the aforementioned Convention.

This legislative insertion within the original layout of Decree 231, is placed in the space indicated for the international, European and domestic procedures which, from 11 September 2001, have set up a device to fight terrorism, which is particularly aimed at striking the capital, financial activities and economic resources, owned or possessed by individuals or corporations involved in terrorist activities.

The law is characterised, with regard to the general outline of Decree 231, by the absence of a detailed list of the offences that are sanctioned, in favour of a broad and elastic formula that encompasses all "*crimes that have terrorism as their purpose or the subversion of the democratic order*".

Similarly unique, is the way in which the system of sanctions is put together, which is characterised by the provision of two distinct levels of penalty, respectively indicated in letters *a* and *b* of the aforementioned law, depending on whether the offence committed is punished with imprisonment of less than ten years (to which there also corresponds a pecuniary sanction of a minimum of two hundred to a maximum of seven hundred shares) or with imprisonment of not less than ten years or a life-sentence (to which there also corresponds a pecuniary sanction of a minimum of four hundred to a maximum of one thousand shares).

Article 8 of Law no. 7 of 9 January 2006, containing "*Measures necessary in order to prevent, challenge and repress female genital mutilation practices as a violation of the fundamental rights of all people and the health of women and children*", has included **ARTICLE 25-QUATER.1** which introduces a new type of offence amongst those that are against the safety of the individual, that is to say the practices of female genital organ mutilation.

In particular the law schedules that:

- "1. In relation to the commission of the offences as per Article 583-bis of the criminal code, the pecuniary sanction of three hundred to seven hundred shares and prohibitive sanctions as per Article 9 paragraph 2 are applied to the entity, within whose structure the offence has been committed, for a duration that is no less than one year. If this should involve a private accredited entity, then the accreditation is furthermore retracted.*
- 2. If the entity or one of its organisational units is permanently used for the sole or main purpose of allowing or facilitating the commission of the offences indicated in paragraph 1, the sanction of a permanent ban on exercising its activity will be applied as per Article 16 paragraph 3".*

That which shows, for the purposes of the establishment of the type of crime described, is the undertaking of the so-called "structural criteria" (the provision of law to be read together with the charging mechanisms against the entity for the offence as per Article 5 of Decree 231), which sets out that the practices of female genital organ mutilation have to be undertaken within the premises at which the entity carries out their activity or however have been carried out with the assistance of material or human resources made available by the entity. In this sense, the most concrete assumption, that will be certainly considered by the legislator, is that the aforementioned offences have been committed within a health structure and by persons exercising a professional health role.

Article **25-QUINQUIES** was introduced by Article 5 of Law no. 228 on 11 August 2003, containing measures against the treatment of persons. The law is not limited to introducing types of offence on the subject of the treatment of persons within the group of the assumed offences, but has also extended the sanctioning perspective to the offences scheduled by Section I of Chapter III of Heading XII of the second Book of the criminal code, listing "*offences against individuals*".

The list includes:

- reducing persons to or keeping persons in slavery or in servitude (art. 600 of the criminal code);
- child prostitution (Article 600-*bis* of the criminal code);
- child pornography (Article 600-*ter* of the criminal code);
- possession of pornographic material (Article 600-*quater* of the criminal code);
- virtual pornography (Article 600-*quater* 1 of the criminal code);
- tourist initiatives aimed at the exploitation of child prostitution (art. 600-*quinquies* of the criminal code);
- human trafficking (Article 601 of the criminal code);
- purchase and sale of slaves (Article 602 of the criminal code).

The sanction system prepared for these offences, schedules both the pecuniary sanction as well as the prohibitive sanction; this latter, however, is scheduled only for the offences as per Articles 600, 601, 602, 600-*bis*, 600-*ter*, 600-*quater* of the criminal code.

The implementation into Italian legislation of the community directive 2003/6/CE of the European Parliament and the Council of the 28 January 2003, in relation to the abuse of privileged information and the manipulation of the market and the directives from the Implementation Commission 2003/123/CE, 2003/125/CE and 2004/72/CE, has represented the cut-off point to review the scope of the administrative offences on the subject of the financial market.

Article 9 paragraph 3 Law no. 62 of 18 April 2005, has introduced within Decree 231, **ARTICLE 25-SEXIES** which encompasses the administrative liability of the entity in the assumption of the commission of offences of:

- abuse of privileged information (Articles 184 and 187-*bis* Unified Finance Law);
- market manipulation (Articles 185 and 187-*ter* Unified Finance Law).

The repression of market abuse is consigned to a "*double binary*" system, that is to say: the criminal sanction, as per Articles 184 and 185 of the Unified Finance Law and the administrative sanction as per Articles 187-*ter* and 187-*ter* Unified Finance Law

Article **25-SEPTIES** was introduced by Article 9 Law no. 123 on 3 August 2007, subsequently modified by Article 30 of Legislative Decree no. 81 on 9 April 2008, containing the Unified Text on the subject of protection of health and safety in the workplace (TUSSL) The new text schedules three different types of illegal administrative crimes by the entity, each one sanctioned with different penalties, proportional to the severity of the deed, that is to say:

- manslaughter (Article 589 of the criminal code committed in violation of Article 55 paragraph 2 of the Legislative Decree implementing the delegation as per Law no. 123 on 3 August 2007);
- manslaughter (Article 589 of the criminal code committed in violation of the regulations on the protection of health and safety in the workplace);
- offences of manslaughter and serious injury committed in violation of the regulations on protection of health and safety in the workplace (590 c. 3 of the criminal code).

The predicate offences singled out in Decree 231 are malicious (willingly undertaken by the subject) and, with regards to these, the Organisational Model has a function of exempting the liability of the entity if the person who has committed the offence has acted by fraudulently avoiding this model. The offences considered in Article *25-septies*, instead, are of a culpable nature and therefore the function of exemption of the Organisational Model is represented by the introduction of measures aimed at making the recipient parties respect the procedures scheduled by the system of prevention and protection outlined by Legislative Decree 626/94 as well as the fulfilments and obligations of supervision as scheduled by the Organisational Model.

The sanction system for these offences schedules the application of both pecuniary and prohibitive sanctions. With regard to the former, one thousand shares are specified as the most serious measure, but only in relation to the offence as per Article 589 of the criminal code committed in violation of Article 55 paragraph 2 of

Legislative Decree 81/08). In the other cases in which manslaughter is committed with a violation of the laws on the protection of health and safety in the work place, a pecuniary sanction that is no less than two hundred and fifty and no more than five hundred shares is applied. Finally, in relation to the offence scheduled and punished by Article 590 paragraph 3 of the criminal code committed with a violation of the laws on the protection of health and safety in the work place, a pecuniary sanction of no less than two hundred and fifty shares is applied.

The applicable prohibitive sanctions are those that are indicated in the list scheduled by Article 9 paragraph 2 for a duration of not less than three months and nor more than one year. The application of prohibitive measures as a precaution is excluded.

Article 10 of the Law no. 146 on 16 March 2006 ("Ratification and execution of the Convention and the Protocols of the United Nations against transnational organised crime, adopted by the General Assembly on 15 November 2000 and 31 May 2001") has extended the administrative liability of the entities for so-called "transnational offences". The subjection of these offences to the regulation scheduled by Decree 231 has not occurred by means of the insertion of an article in the text of the Decree, but rather as said, due to the effect of the ratification of the Convention.

Article 3 of the Law no. 146/2006 defines "transnational offence" as a crime which is punished with the penalty of imprisonment of no less than at least four years, if "an organised criminal group" is involved, and also:

- a) if it is committed in more than one State,
- b) or it is committed in one State, but a substantial part of the preparation, planning, direction or control of the offence is carried out in another State,
- c) or it is committed in one State, but in said state it involves an organised criminal group, which is involved in criminal activities in more than one State,
- d) or, again, it is committed in one State, but has a substantial impact on another State.

The scope of this legislation is that of stopping organised crime, extending international collaboration. With particular reference to the regulation of the administrative liability of the entities, these have been taken in consideration of Article 10 of the Law no. 146/2006 a series of offences that fall within the definition of the abovementioned transnational offence; the offences that are listed as follows therefore have relevance for the purposes of Decree 231 as long as the criminal conduct is qualifiable as transnational within the "context" indicated in letters from a) to d) of Article 3 of the Law no. 146/2006, and have been committed in the interest and the advantage of the entity, by subjects who carry out a management or subordinate role.

This deals with the following offences:

- conspiracy to commit a crime (Article 416 of the criminal code);

- Mafia type of association (Article 416 *bis* Criminal Code);
- conspiracy to commit a crime aimed at contraband tobacco that has been manufactured abroad (Article 291 *quater* of Presidential Decree no. 43 on 23 January 1973 Unified Text on customs laws);
- association aimed at the illegal trafficking of narcotic or psychotropic substances (Article 74 of the Presidential Decree no. 309 on 9 October 1990, Unified Text of the laws on the subject of regulation of narcotic substances);
- offences regarding the trafficking of migrants (Article 12, paragraphs 3, 3 *bis*, 3 *ter* and 5, of Legislative Decree no. 286 on 25 July 1998, Unified Text of the regulations on the subject of immigration and subsequent modifications);
- incitement not to make statements or to make false statements to the legal authorities (Article 377- *bis* of the criminal code);
- personal favouritism (Article 378 of the criminal code).

Article 10 of the Law no. 146/2006 in paragraphs 5 and 6 scheduled the administrative liability of the entities, also in relation to offences of money laundering (Article 648 *bis* of the criminal code) and the use of money, goods or services of an illegal provenance (Article 648 *ter* of the criminal code) if committed transnationally. Subsequently Legislative Decree no. 231 on 21 November 2007 has repealed the aforementioned paragraphs (Article 64, paragraph 1, letter f), but with the introduction of Article 25 *octies* in Decree 231 (Article 63 of Legislative Decree no. 231/2007), as herein stated, today these offences are relevant for the liability of the entity even if committed on a national basis.

In the event of sentence in relation to the offences as per Articles 416, 416 *bis* of the criminal code, 291 *quater* of Presidential Decree. no. 43/1973, 74 of Presidential Decree. no. 309/1990 a pecuniary sanction of four hundred to one thousand shares is applied to the entity.

The prohibitive sanctions are those that are scheduled by Article 9, paragraph 2 of Decree 231 for a duration that is no less than one year.

If the entity or one of its organisational units is predominantly used for the only or main purpose of allowing or facilitating the commission of the abovementioned offences, the sanction entailing the permanent ban of exercising of activity will be applied (Article 16, paragraph 3 Decree 231).

In the case of a sentence in relation to offences concerning the trafficking of migrants, the pecuniary sanction of two hundred to one thousand shares is applied to the entity.

The prohibitive sanctions are those that are scheduled by Article 9, paragraph 2 of Decree 231 for a duration of not more than two years.

In the event of sentence in relation to the offences as per Articles 377 *bis* and 378 of the criminal code a pecuniary sanction up to five hundred shares is applied to the entity

prohibitive sanctions are not scheduled.

Article 25 octies (receipt of stolen goods, laundering and use of money, assets or services of an illegal provenance) has been introduced by Article 63 of Legislative Decree no. 231 on 21 November 2007 ("Implementation of directive 2005/60/CE regarding the prevention of the use of the financial system for the purposes of laundering the proceeds of criminal activity and financing of terrorism as well as directive 2006/70/CE that leads to measures of execution"), which came into force on 29 December 2007, which has extended the list of offences, a requirement for the application of the administrative liability of the entities, including offences of money laundering and use of money, assets or services of an illegal provenance, not only in the sphere of transnational crimes, but also in a national sphere.

The types of crimes that are included in Article 25 octies of Decree 231 are those that are regulated by the criminal code, and notably:

- receipt (Article 648 of the criminal code);
- money laundering (Article 648 bis of the criminal code);
- use of money, assets or services of an illegal provenance (Article 648 – ter of the criminal code).

The pecuniary sanction of two hundred to eight hundred shares is applied to the entity, which could be increased from four hundred to one thousand shares if the money, assets or other services should originate from an offence for which the penalty of imprisonment for a maximum duration of five years is applicable.

The prohibitive sanctions are those that are scheduled by Article 9, paragraph 2 of Decree 231 for a duration of not more than two years.

The entity will be liable for these offences if an interest or advantage has been derived from these. Given that the offences as per Articles 648, 648 bis and 648 ter of the criminal code could be committed by "anybody", the interest or the advantage of the entity, therefore, should be assessed in relation to the connection of the incriminating behaviour with the activity exercised by the entity itself.

The insertion of Article 25 octies in the list of the predicate offences for the application of Decree 231, has the purpose of protecting the economic system from the distortions that the phenomenon of money laundering creates, avoiding the introduction of money and other proceeds deriving from illegal activities into regular economic or financial activities.

The rules concerning the prevention of money laundering activity, in particular, Article 648 bis of the criminal code are going to impact on any form of reinvestment of illegal profits, whatever the malicious offence should be from which the illegal capital should proceed, re-introducing it into circulation "laundered" in order to prevent the identification of the illegal provenance (for instance, even types of offence of a taxation nature might constitute a predicate offence, for the subsequent offence of money laundering, such as, for example, in the event of the issuance of invoices for non-existent operations, or rather in the event of the acquisition of productive assets originating from the offence of theft).

Article 648 ter of the criminal code, instead, consists in the use of capital of an illegal provenance in economic or financial activities (for instance, in the case of use of illegal capital to win a tender to auction).

It is appropriate to make a brief mention of the fact that Legislative Decree no. 231/2007 for specific categories of subjects, i.e. via financial intermediaries, professionals, auditors and other subjects who operate within specific activities, prescribes a modification of the role of the Supervisory Body (with regard to the content of Article 6) which imposes the obligation of supervising the observance of the money laundering measures that are scheduled by the Decree itself (Article 53 of Legislative Decree no. 231/2007). The Body is furthermore obliged to inform the control authorities indicated in Article 52 of the offences on the subject of money laundering. A failure to adhere to the obligations of communication is criminally sanctioned with imprisonment for up to a year and a fine of one hundred to one thousand euros (Article 55 of Legislative Decree no. 231/2007).

In the assumption in which the offences indicated in Articles from 24 to 25-*octies* of Decree 231, have been put in place in the form of an *attempt*, the pecuniary and prohibitive sanctions are reduced by a third to a half, whilst the entity does not respond when they voluntarily prevent the completion of the action or the undertaking of the event.

For the definition of *attempt* reference should be made to Article 56 of the criminal code, that encompasses the attempted offence when suitable acts have been put in place, directed in an unequivocal way to commit an offence, but the action is not fulfilled or the event is not confirmed; this non-commission of the offence justifies the reduction of the penalty.

As to the assumption of the voluntary prevention of the commission of the action or the realization of the event by the entity, this represents a particular assumption of withdrawn activity regulated by Article 56 paragraph 4 of the criminal code, whilst in the penal system the active withdrawal of the criminal offence is however punished, even if with a penalty reduced from a third to a half, within the system of Decree 231, the entity that acts voluntarily to avoid the action or the event taking place, is not subject to any penalty, reneging on any supposed identification report between the entity and the senior person or employee.

## **1.2 The sanctions**

The sanctions that derive from the administrative liability, following the commission of the offence (the offences are set out specifically in paragraph 1.1), are regulated by Articles 9 to 23 of Decree 231 and are:

- a) pecuniary sanctions (Articles 10-12): are always applied for each administrative offence and have an afflictive and non-compensatory nature; for the payment obligation of the pecuniary sanction the entity

should only respond with their capital or with the common fund; the sanctions are calculated on the basis of a system "*per shares in a number that is not less than one hundred and not greater than one thousand*"; the measurement of which is determined by the judge on the basis of the severity of the deed or the level of responsibility of the entity, by the activity carried out by the entity to eliminate or minimise the consequences of the illegal deed and to prevent the commission of further offences; every single share goes from a minimum of 258 euros to a maximum of 1,549 euros, and the amount of each share is determined by the judge, in consideration of the economic and capital conditions of the entity; the amount of the pecuniary sanction, therefore, is determined by the effect of the multiplication of the primary factor (number of shares) by the second (amount of the share);

a) 1) cases of reduction of the pecuniary sanctions (Article 12): are cases, peremptorily scheduled, in which:

- the pecuniary sanction may be reduced by half (Article 12, first paragraph), and notably:

- i) if the author of the illegal deed has committed the offence mostly in their own interest or the interest of third parties and the entity has not achieved any advantage, or rather has achieved a minimum advantage,
- ii) the capital damage caused is of particular tenuousness;

in these cases the amount of the share is always equal to 103.29 euros, and since the judge may only determine the number of the shares, the pecuniary sanction may not be less than 10,329 euros nor greater than 103,291 euros; in these situations prohibitive sanctions are not applied;

- the sanction is reduced by a third to a half (Article 12, second paragraph):

iii) if before the declaration of the opening of the preliminary phase of the hearing, the entity has fully compensated the damage and has eliminated the damaging or dangerous consequences of the offence, or if it has effectively acted accordingly;

iv) if the entity has adopted and made operative, an organisational model that is suitable in preventing offences of the kind that have been verified;

if both of these conditions are combined, the sanction may be reduced by a half to two thirds (Article 12, third paragraph); furthermore mechanisms of an increase in the sanction of up to ten times the product or the profit achieved by the entity are scheduled for some offences in cases that are specifically expressed by Decree 231, like for example, for offences on the subject of the abuse of privileged information and manipulation of the market (Article 25 sexies);

b) prohibitive sanctions (Articles from 13 to 17): are applied only in the events in which they are expressly scheduled and are (Article 9, paragraph 2):

- the prohibition of exercising the activity;
- the suspension or the retraction of authorisations, licenses or concessions that are functional to the commission of the offence;
- a ban on contracting with the public administrations, except for obtaining a public service; this

ban can also be limited to certain types of contract or certain types of administrations;

- the exclusion of tax breaks, financing, contributions or subsidies and the possible retraction of those already granted;
- a ban on publicising assets or services;

prohibitive sanctions have the characteristic of limiting or conditioning company activity, and in the more serious cases they may paralyse the entity (a ban on the exercising of activity); these furthermore are aimed at preventing behaviour that is connected to the commission of offences; Article 45 of Decree 231, in fact schedules the application of the prohibitive sanctions indicated in Article 9, paragraph 2, as a precaution when serious suspicions exist to consider the existence of liability of the entity for an established illegal administrative event that relates to an offence and specific elements that lead to the definite conclusion that there is a danger of offences being committed that are of a similar nature to that for which they are being proceeded against; these sanctions are applied, as said, in the cases that are expressly scheduled by Decree 231, when at least one of the following conditions occur:

i) the entity has gained a profit of a significant size from the offence and the offence was committed by subjects in a management position or rather by parties subject to the directions of others and, in this case, the commission of the offence was determined or facilitated by serious organisational failures;

ii) in the event of a repetition of the offences;

the prohibitive sanctions have a duration that is not less than three months and no greater than two years; in waiver of temporality it is possible that permanent sanctions may be applied, in the more serious situations that are described in Article 16 of Decree 231;

the choice of the type and the duration of the prohibitive sanctions (Article 14) falls to the judge who must consider the specific activity to which the illegal activity by the entity refers, and the suitability of the individual sanctions to prevent offences of the kind that has been committed; in the choice of sanctions, however, the prohibition on the exercise of activity is only applied when the other prohibitive sanctions are inadequate; if necessary the prohibitive sanctions can be applied jointly.

Article 15 of Decree 231 prescribes that in place of the application of prohibitive sanctions, which determines the stoppage of the entity's activities, if there are any particular requirements, the judge may appoint a commissioner for the continuance of the entity's activity for a period equal to the duration of the prohibitive penalty.

The prohibitive sanctions are not applied (Article 17) when the following conditions occur prior to the opening of the preliminary hearing:

i) the entity has fully compensated the damage and has eliminated the damaging or dangerous consequences, or has in any case effectively acted accordingly,

iii) the entity has eliminated the organisational failings that have determined the offence by means of the

adoption of organisational models that are suitable in preventing offences of the kind that have been verified,  
iii) the entity has given the profit achieved up for confiscation.

The pecuniary and prohibitive sanctions are reduced by a third to a half in relation to the commission of the offence in the form of the attempt (Article 26);

c) confiscation (Article 19): is an autonomous and obligatory sanction, which is applied with the sentence against the entity, and is geared towards the price or the profit of the offence (except for the part that may be returned to the injured party), or rather, if it is not possible, sums of money or other services of an equivalent value to the price or the profit of the offence; these exclude the rights acquired by a third party in good faith; the aim is that of preventing that the entity should benefit from illegal behaviour in order to obtain "profits"; with regard to the meaning of "profit", having considered the significant incidence that confiscation might have upon the capital of the entity, doctrine and the law have expressed various and oscillating instructions, for the novelty of the subject in reference to the "confiscation-sanction" scheduled by Decree 231; according to the most recent instructions when drafting this model represented by sentence no. 26654 of 2008 pronounced by the Supreme Cassation and United Sections Court (on 27 March 2008 - lodged on 2 July 2008) the profit from the offence in the preventative seizure functional to the confiscation, is constituted by the "economic advantage of direct and immediate causal derivation from the offence and definitively determined net of the effective benefit that may have been achieved by the injured party, within the sphere of the bilateral relationship with the company";

Article 53 of Decree 231 schedules the possibility of arranging a preventative seizure aimed at the confiscation of assets belonging to the entity, which make up the price or the profit of the offence under the conditions established by law (so-called *fumus boni iuris* [factual and legal grounds for a claim] and *periculum in mora* [danger in delay]); the procedures scheduled by Articles 321 and subsequent of the criminal code on the subject of preventative seizure are applied;

d) the publication of the sentence (Article 18): can be arranged when the entity has a prohibitive sanction applied; the sentence is published only once, as an extract or in full, in one or more newspapers chosen by the court, and by means of notice on the local notice-board where the entity has its headquarters; the publication is at the cost of the entity, and is carried out by the chancellery of the courts; the aim is to make the public aware of the sentence, and it is obvious that this concerns a sanction that impacts on the image of the company itself.

### **1.3 Precautionary measures**

Decree 231 schedules the possibility of applying the prohibitive sanctions scheduled by Article 9 paragraph 2 to the entity, even as a precaution.

The precautionary measures respond to a requirement of processual precaution, as they are applicable during the course of the procedures and therefore against a subject who holds the position of being under investigation or charged, but who has not yet been sentenced. For this reason, precautionary measures may be arranged, upon request by the Public Ministry, in the presence of determined conditions.

Article 45 indicates the requirements for the application of precautionary measures that condition the recourse to the existence of serious suspicions of culpability on the liability of the entity, thus outlining the measures contained in Article 273 paragraph 1 of the code of criminal procedure. The evaluation of serious suspicions in reference to the applicability of precautionary measures as per Article 45 should consider:

- the complexity of the illegal administrative offence that may be ascribed to the entity;
- the relationship of dependence between the offence-requirement;
- of the existence of interest or advantage for the entity.

Article 45 furthermore schedules that the court should verify the existence of the precautionary requirements represented by the danger that offences of the same nature as the one which is being proceeded against may be committed. This concerns a second instance of assessment in which the court, on the basis of the material presented by the Public Ministry, formulates a prognosis of *periculum in libertate* (or, as is better specified in relation to the entity, *periculum in negozio*) on the basis of the established and specific issues that make this danger able to be considered as definitive.

As for the criteria of choice in the prohibitive measures (Article 46), the legislator has used the principles of: *proportionality* with regard to the severity of the deed and the sanction that might be imposed; *suitability* in relation to the definitive precautionary requirements; *gradualness* in order that the measure adopted should always be the one that is least oppressive amongst those that are enough to satisfy the precautionary requirements of the case.

The procedure to apply the precautionary measures is modelled on that which is outlined by the code for criminal procedures, even if with some waivers. The court competent to prepare the measure, upon request of the public ministry, is the proceeding court, or rather in the preliminary investigations phase, the court for the preliminary investigations. The applicative ordinance is that scheduled by Article 292 of the code for criminal procedure, a law that is expressly recalled in Article 45 of Decree 231.

One difference with regard to the system outlined in the standard code of procedure, concerns the centrality of the cross-examination that, within the system outlined by Decree 231, assumes significance not only in the second phase of application by the court measures, but also at the time before the formulation of the request. The court, having received the request from the Public Ministry, fixes a chamber hearing *ad hoc* to discuss the application of the measure; participating in this hearing as well as the Public Ministry, are the entity and their defence, who, prior to the hearing, may access the request of the Public Ministry and see the elements on which this is based.

#### **1.4 The models for organisation and management for the exoneration of liability**

Articles 6 and 7 of Decree 231 require specific forms of exoneration for the administrative liability of the Entity. In particular Article 6, "*Subjects in a managerial position and models of organisation belonging to the Entity*", schedules that the Entity is not liable if it is proven that:

- the management body has adopted and efficiently implemented suitable organisation and management models before the deed was committed, in order to prevent offences of the kind that have been verified;
- the task of supervising the function and the observance of the models, as well as responsibility for updating has been entrusted to a body within the entity (hereinafter Supervisory Body or, in short SB) provided with autonomous powers of initiative and control;
- the persons who have committed the offence have acted by fraudulently eluding the models of organisation and management adopted by the entity;
- that there has been no omission of or insufficient supervision by the Supervisory Body.

Article 7 "*Persons who are subject to other people's management and models of organisation for the Entity*" schedules that in the event of offences committed by people under the direction or supervision of one of the subjects as per Article. 5, paragraph 1, letter a) of the decree itself, the entity is liable if the commission of the offence has been made possible by the non-observance of the obligations of direction and supervision by the latter.

In every case, the non-observance of the obligations of direction or supervision is excluded if the entity, prior to the commission of the offence has adopted and efficiently implemented a model of organisation, management and control that is suitable to prevent offences of the kind such as that which has been verified (Article 7, paragraph 2).

#### **1.5 Requirements for the organisation and management models**

Article 6, paragraph 2 of Decree 231, indicates the essential characteristics for the construction of an

organisation and management model, that is, the model should:

- identify the risks and single out the areas/sectors of activity in the sphere of which there exists the possibility of committing the offences scheduled by Decree 231; this concerns undertaking a so-called "map of risks"; that is, it requires the analysis of the specific company context, which is necessary not only to single out the areas/sectors of activity "that are at risk of offence", but also in order to determine the methods according to which it is possible to verify prejudicial events for the purposes as per Decree 231;
- arrange specific protocols that are directed at planning the formation and implementation of decisions by the entity in relation to the offences to be prevented; this requires the evaluation of the preventative control system that exists within the entity and their capacity to efficiently compare/reduce the risks that have been singled out, as well as its possible adjustment in order to implement a control system that is able to prevent the risks that have been singled out;
- single out the methods of managing financial resources that are suitable in order to prevent these offences being committed;
- arrange obligations of information for the body that is in charge of supervising the function and observance of the models;
- arrange a systematic and regular audit: this requires the arrangement of internal processes that aim to ensure that the function of the model should be regularly and appropriately verified;
- introduce an internal disciplinary system suitable for sanctioning a failure to follow the measures indicated in the model.

Article 7, paragraphs 3 and 4, establishes that:

- the Model, considering the type of activity being carried out as well as the nature and the size of the organisation, should arrange measures that are suitable to guarantee the undertaking of the activity in adherence to the law and to promptly discover risky situations;
- the efficient implementation of the Model requires regular verification and modification of the latter, if there should be any significant violations of the legal prescriptions or if there should be any significant changes within the organisation; furthermore, the existence of a suitable regulatory system assumes significance.

Decree 231 schedules that the models of organisation and management may be able to be adopted on the basis of codes of behaviour drafted by the representation trade associations, communicated to the Ministry of Justice as per Article 6, paragraph 3 Decree 231. Furthermore, it is scheduled for those entities of a small size, the task of supervision may be directly carried out by the management body.

Furthermore, only for the aims of the offences in the sphere of safety in the work place and protection of health at work, Article 30 of Legislative Decree 81/2008 (Unified Text on health and safety in the work place)

prescribes the requirements of the models for organisation, management and control that are suitable to effectively exempt corporate bodies from administrative liability. Paragraph 5 of the aforementioned Article establishes that, during the "first application", and for the corresponding parts, the organisation models defined uniformly to the UNI-INAIL guidelines for a management system for health and safety in the work place from 28 September 2001 or the British Standard OHSAS 18001:2007, are assumed to be in compliance with the requirements for a model of organisation, management and control for the exemption of the Entity.

## **2. The organisation and management model for Biffi Italia S.r.l.**

### **2.1 Biffi Italia S.r.l.**

Biffi Italia S.r.l. (hereinafter "**Biffi**") is an Italian company that is part of the multinational Tyco International group. With about 118,000 employees, the Tyco Group operates in more than 60 countries in various sectors: products and services for safety, for the prevention of fires and, that to which Biffi Italia belongs, products for flow control (Tyco Flow Control). In particular, Biffi has as its objective, the planning, production, export, import, the sale and marketing of devices for flow control, also including actuators for valves.

Biffi, founded in 1955, became part of the Tyco Group in 1997 and, in its plant located in Fiorenzuola d'Arda currently employs about 300 employees.

#### *The governance model of Biffi Italia*

The system of *corporate governance* for Biffi Italia is set out as follows

The **assembly** of shareholders is competent to deliberate, in an ordinary and extraordinary meeting, on the subject matter reserved to the latter by the Law or by the Articles of Association. Biffi Italia is a limited liability single partner company under the management and coordination of Tyco Italy (Switzerland) GmbH.

The **Board of Directors** is provided with all-encompassing powers for the ordinary and extraordinary management of the Company and, more notably, has all the powers for the implementation and achievement of company aims except for that which is strictly reserved to the shareholders by the Law or the Articles of Association.

The **Board of Directors** for Biffi is made up of 3 (three) members amongst which are 1 (one) Chairman and 1 (one) Managing Director. The Chairman of the Board of Directors is also currently the Chairman of the TFC division of EMEA.

The **Statutory Board of Auditors** is made up of 3 (three) statutory members and 2 (two) deputy members. The Statutory Board of Auditors is entrusted with the task of verifying:

- the observance of the Law and the Certificate of Incorporation;
- adherence to the principles of correct administration;
- the suitability of the organisational structure of the Company, of the system of internal control and the accounting administration system, also in reference to the reliability of the latter to correctly represent the actual management.

Biffi has entrusted the task of the revision and control of the accounts to an **Auditing Company**, registered in the Special Register held by Consob (The National Commission for Companies and the Stock Exchange).

*The Biffi organisational structure*

The organisational structure of the Company, designed to guarantee on the one hand, the separation of roles, tasks and responsibilities between the various functions and on the other hand the maximum possible efficiency, is characterised by a precise definition of the tasks for each company area and their connected liabilities.

In particular, the organisational structure of Biffi schedules an operative management separated by the three establishments and the sales division.

In particular, in the three establishments of Vanessa, Raimondi and Fasani, the following Directives/Functions are present:

**Plant & Operations;** under the direction of the Plant Manager, have as their objective the management, from a point of view of continuous improvement and support for company strategies, for the entirety of the provision and productive-logistic processes. This objective is pursued in compliance to the highest standards of quality and on the subject of the Environment, Health and Safety.

Within the sphere of these functions, the following processes are allocated:

**Planning;** within this process is organized the production planning based on specific customer needs and the materials availability; here the purchasing planning is structured on the production needs basis and the logistic activities are managed.

**Sourcing:** meaning the entirety of the supply phases for raw materials, assets and instrumental services for all production activities. In particular these include the following activities: planning of the purchases on the basis of productive requirements, supply market evaluations, the selection, evaluation and monitoring of the suppliers, the definition of the contractual agreements, the issuance and management of the orders.

**Production:** the entirety of activities aimed at creating the company products, in the quantity and quality required as well as within the times established. In this sphere, all the activities connected with the exercising of the plants, the good working order of all the installations ensuring the maintenance of the production capacity, the maintenance of the quality of the products, the management of the company stocks and logistics activities, are all divided.

**Environment, Health and Safety:** within this function all the activities aimed at the application of the provisions of the law on the subject of safety in the work place are carried out (installations, machines and work environments). The employer has appointed a person dedicated to safety and protection activities (ASPP) and his manager (RSPP), the employees representatives for Safety matters, appointed a doctor and other professional figures as per relevant laws and regulations. The manager is asked to keep updated an internal legal archive concerning production, safety, ecology and environment and supply professional help regarding relationships with public authorities.

**Project Management and Contract Review:** within this function all the activities aimed at the correct management of purchase orders, contract review, customer service and spare parts management.

**Engineering:** the entirety of activities aimed at guaranteeing the technical evolution of the product lines together with the commercial and industrial strategies and in particular the planning, researching and development, testing of products.

**Quality Assurance;** the managers of this function, reporting directly to the managing directors, carry out all the activities that concern the assurance of quality, in terms of efficacy and efficiency, of the company processes and the maintenance of the certifications, implementing corrective and improvement actions highlighted by the Certification Bodies.

**Sales & Marketing;** these carry out all the activities linked to the definition and implementation of the strategies/policies for penetration and/or consolidation of market positions in function of the evolution of demand and competition. In particular within this function are carried out [the sales of company products](#)

through the issue of sales offers and orders acquisition.

Within this functions are also managed the relationships with the agents, distributors and collaborators and the post sales technical assistance services.

**Information Technology:** all the activities directed at ensuring the functionality of the hardware and software systems of the company come under the responsibility of the IT Manager, in order to respond to the requirements for revision/updates/implementation of company software and to manage the activities connected with the provision of new software and hardware.

Furthermore, the following Managers/Functions are present, who report to their relative managers at Tyco EMEA and who carry out their activities for all the establishments and for the Sales Office:

**Finance;** here the entirety of activities regarding the investigation and processing of information of an economic/financial nature are carried out (aimed at drafting the fiscal budget and the internal company reports), for management control, the completion of tax requirements, the management and control of cash flows, personnel administration (and in particular the salaries, contributions and tax aspects connected to the management of personnel), management of relations with the auditors.

Within Finance Management is the **Compliance Supervisor**, who has the task of facilitating and verifying adherence to legislation on the subject of Company Compliance. This person, established for the fulfilments requested by the American law called the Sarbanes Oxley Act, has also been formally given the task of supporting the Company and the Supervisory Body for the fulfilments requested by Decree 231.

**Human Resources;** they look after the various aspects connected to the management and development of human resources amongst which are recruitment, selection and inclusion into the company; training; career and personnel mobility; union relations salary.

## **2.2 Adoption of the organisation and management model by Biffi Italia.**

Biffi has considered it essential and in compliance with their company policy to adopt and subsequently update their own Organisation, Management and Control Model as per Decree 231 (hereinafter, for short, the "Model"), in order that all those who operate within Biffi observe, within the development of their own activities and services, behaviour such as to prevent the risk of the commission of offences scheduled by Decree 231.

The construction of the Biffi Model is based, not only on the prescriptions of Decree 231, but on the Guidelines from Confindustria, edition of May 2004, drafted on the basis of the observations formulated by the Ministry of Justice, which contain specific and definitive indications for the adoption and implementation of models. The trade associations have not up until now, issued guidelines for the companies operating within the sector in which Biffi carry out their activities.

The Organisation and Management Model has been approved and adopted by the Board of Directors of Biffi Italia, in regard to Article 6, paragraph 1, letter a) Decree 231, on 27 September 2006.

At the same time as the approval and adoption of the Organisation and Management Model, the Board of Directors has established the body that is delegated to supervise the function and observance of the Organisation and Management Model (the "**Supervisory Body**") in compliance with that scheduled by Decree 231.

Subsequently, the Company, also by means of the Supervisory Body, has continued to monitor the Model, arranging improvement and update interventions in the light of both internal organisational changes as well as legislative evolution.

For this purpose, an intervention plan has been planned, aimed at placing the organisational structure of the Company under a new analysis, in order to proceed with the update of the summary document that is considered as not being completely representative of the Model that is effectively in place.

In November 2007 a Work Group was established, made up of personnel from Biffi, from the legal department and supported by consultants coming from a primary consultancy company, which had as its target the development of the mapping and assessment of risk for the update of the Model. This activity was concluded in 2008 and, on the basis of the results, the Company has updated their Model, the main results of which are represented in this summary document, which furthermore keeps abreast of the legislative evolution following the first draft of the document and the new Guidelines by Confindustria approved on 31 March 2008.

The aforementioned Work Group, as mentioned, has subjected the organisational and company structure of Biffi to a new and complete risk assessment.

Whilst carrying out the preliminary analyses for the update of this Model, the Work Group has retained particular consideration in the areas in which the Company personnel and collaborators who were involved in an inquiry by the Public Prosecutor of Milan were operating, in relation to offences covered by Decree 231. In view of this, the activities, described as follows, were carried out giving priority to the aforementioned areas as well as analysing in these specifically the control activities put in place by the Company in order to prevent the

risk of commission of behaviour that is significant for Decree 231.

In particular, it has been carried out, by means of the analysis of the available company documentation, as well as by means of carrying out numerous interviews of the Company personnel and the complete mapping of the company activity (so-called *risk mapping*), which had as its objective the identification of the offences that are significant as per Decree 231 considered to be able to be committed in theory during the undertaking of company activities.

Furthermore, as a result of this work, a complete list of the areas or processes that are so-called "significant" has been drafted, these include:

- the areas or processes so-called "at risk", i.e. those company processes which have been in theory considered at possible risk of the commission of the offences indicated by Decree 231 and in theory in reference to the activities carried out by the Company;
- the so-called "instrumental" areas or processes, that is those processes via which the financial resources and/or substitutional means, which are necessary to support the commission of the offences in the area "at risk" of offence are managed.

In the sphere of each instrumental and at risk area, the "sensitive" activities have been singled out, that is those activities where there is a potential risk of offences being committed as well as the company Management/Functions involved.

For each of the "sensitive" activities, there has been an attempt to identify the potential methods with which those offences previously considered were out.

The Work Group has therefore arranged for the investigation and analysis of the existing company controls – the so-called *as is analysis* - and the subsequent identification of the points for improvement, with the formulation of suggestions and related plans of action - so-called *gap analysis*.

Furthermore, the Work Group has carried out a careful analysis of further components considered essential for the Model, that is:

- Supervisory Body;
- Code of Ethics;
- Disciplinary System;

singling out the interventions of adjustment that are considered necessary, all subsequently implemented by Biffi.

### **2.3 Function of the Organisation and Management Model for Biffi Italia**

The Biffi Model has been arranged keeping in consideration the results of the above described preparatory activities and, in particular, the procedures of the internal control systems and the company processes existing within Biffi with the regulation and the provisions of Decree 231.

This version of the Model perfects and includes both the Model that has been previously approved and implemented, as well as all the rules of conduct, principles, policies and procedures of Biffi, as well as all the existing organisational and internal control instruments, with the implementation of the requirements, which respond to the aims of Decree 231 with the specific aim of preventing the commission of the offences contemplated herein.

This objective is achieved by means of the highlighting of the sensitive activities, the construction of an organic and structured system of procedures and the adoption of a suitable system of risk control. The Organisation and Management Model for Biffi aims to:

- make all those who operate for and on behalf of Biffi aware of the fact that the commission of (or even attempt at) an offence, even if carried out to the advantage or in the interest of Biffi, represents a violation of the Model and the Ethics Code for Biffi and the principles and measures expressed here and constitutes a crime liable to sanctions, on a criminal and administrative basis, not only against the author of the offence, but also against Biffi;
- single out the behaviour that has been condemned by Biffi, where contrary, as well as the measures of law, to the laws and rules of conduct which Biffi intends to suggest and adhere to in the conduct of their company activities;
- permit the monitoring of the sectors of activities at risk of offence and the prompt intervention to prevent and hinder the commission of offences.

For the construction of the Model and for the prevention of the commission of the offences contemplated by Decree 231:

- a code containing the ethics principles of Biffi has been arranged and adopted, which includes the rules of conduct that are already current and applied within the company (the "**Ethics Code**") and constitutes an integral and substantial part of the Organisation and Management Model;
- have been identified in the areas at risk of the commission of the offences as per Decree 231, by means of an in-depth analysis of the activities carried out, of the existing procedures and controls, of

- the standard procedures, of the authorisation levels;
- the potential risks and the conditions for the possible commission of offences in the interest or to the advantage of Biffi have been singled out;
  - a suitable system of control and organisational procedures has been defined and integrated, that have been formalised in order to guarantee, amongst other things, coherence between the exercising of the functions and the powers and responsibilities assigned, the implementation and observance of the principle of separation of the functions and the verifiability of company conduct and of the documentation relating to each operation;
  - the Supervisory Body has been identified, and has been attributed the tasks of supervision for the efficient and correct function of the Organisation and Management Model and conferred with powers such as to guarantee its full and efficient operation, both in terms of autonomy and of available means;
  - an information and communication flow has been scheduled for the Supervisory Body and on behalf of the latter;
  - a specific disciplinary system to be applied in the event of a violation of the Organisation and Management Model and the Ethics Code has been approved and adopted, in reference to the requirements of Decree 231;
  - a system of circulation, awareness and education has been defined and launched, at all company levels, as well as for those who operate for and on behalf of Biffi, on the behaviour rules scheduled in the Ethics Code and the Organisation and Management Model, as well as for the internal processes and procedures, aimed at governing, preventing and controlling those activities at risk and the adherence to the Model.

#### **2.4. Relationship between the Organisation and Management Model and the Ethics Code**

An essential element of the preventive control system is represented by the adoption and implementation of the relevant ethics principles for the prevention of the offences scheduled by Decree 231; Biffi Italia has therefore adopted their own Ethics Code with reference to the offences contemplated by Decree 231 (see part B) of this document).

The Biffi Model and Ethics Code are strictly correlated and must be understood as the expression of a single body of rules adopted by Biffi in order to encourage the other moral principles, correctness, honesty and transparency in which Biffi believes and intends to unite to their activity.

The Model responds to the requirements to prevent the commission of offences scheduled by Decree 231 and, in general, from the rules of law by means of the implementation of specific rules, processes and procedures.

The Biffi Ethics Code, which is an integral and substantial part of the Model and which has been approved contextually with the first version of the Model from the Company's Board of Directors in September 2006, is an instrument with a general scope, which establishes the behaviour that Biffi Italia intends to respect and ensure respect for in the undertaking of company activities, for the protection of their reputation and image in the market, as well as to promote it and circulate it. In the Ethics Code, referred to for summary requirements, the main ethics principles for Biffi are therefore illustrated as well as the rules of conduct for the protection of all company activities, including the principles of honesty, integrity and correctness, respect for the laws and regulations of all the countries in which Biffi operates, the transparency of operations, the behaviour to be adopted by all those representatives of Biffi amongst which are the Public Administration, the clients, the suppliers, etc.

The Ethics Code is integrated with the "*Guide for Ethical conduct*" of the Tyco Group and already adopted by Biffi on 30 May 2003 in order to ensure and encourage, amongst others, the observance of the highest standards of individual and company integrity, and the liability in the undertaking of their activities.

Strict respect for the rules of conduct and principles expressed in the Ethics Code and in the Organisation and Management Model is requested of everyone, the recipient parties of the Code itself, who should furthermore conform to all the rules of conduct, whether general and/or specific, contained in the Ethics Code and in the Organisation and Management Model, as well as in all the company processes and procedures (limited to the applicable aspects).

Recipient parties of the Ethics Code, as defined therein, means all those who operate for and on behalf of Biffi, including:

- the employees;
- the members of the Company boards;
- the agents;
- the distributors;
- the collaborators;
- the consultants;

- the suppliers.

as well as all those who maintain contractual relations with Biffi.

## **2.5 Structure of the Organisation and Management Model – Modifications and additions**

The Organisation and Management Model is integrated by both the principles and measures contained in the Ethics Code, and the collection of processes, procedures and systems already applied within Biffi.

In particular, for the purposes of this Organisation and Management Model, all the instruments already in operation at Biffi are expressly and integrally recalled, including all the procedures and rules of behaviour adopted in function of the implementation and respect of the "Sarbanes-Oxley" U.S. law, from the U.S. Foreign Corrupt Practices Act and all the other regulations and laws, both Italian and foreign, on the basis of which Biffi has implemented a system of processes, policies, procedures and rules of behaviour, also in compliance with the instruction from the Group to which Biffi belongs. These instruments constitute an integral and substantial part of this Model.

This Model is made up of a "General Section" and the "Special Sections".

The "General Section" shows the contents of Decree 231, the function of the Organisation and Management Model, the tasks of the Supervisory Body, the sanctions that are applicable in the event of violation, in general, the principles, the logic and the structure of the model itself.

The "Special Sections" (see part C of this document) are dedicated to the specific types of offence and in particular:

- Special Section 1: Offences against the Public Administration;
- Special Section 2: Corporate offences;
- Special Section 3: Offences aimed at Terrorism and Subversion of the Democratic Order;
- Special Section 4: Offences of Manslaughter and Serious Injury committed in violation of the Regulations on protection of Health and Safety in the Workplace;
- Special Section 5: Offences involving the Receipt of stolen goods, Laundering and Exploitation of Money, Assets or Services of an Illegal Origin.

The objective of each Special Section is to recall the obligation for the highlighted recipient parties to adopt the rules of conduct according to that scheduled by the company procedures scheduled in the Model, to prevent the commission of the offences contemplated by Decree 231 and highlighted as relevant in theory on the basis of the organisational structure and the company activities undertaken.

In particular, for each Special Section, the following are indicated:

1. the areas "at risk of offence" and the related sensitive activities;
2. the possible "instrumental" areas and the related areas at risk;
3. the company management and/or functions that operate within each area of risk or instrumental area;
4. the main controls in place in the individual areas at risk of offence;
5. the offences that might in theory be committed and the connected potential methods of undertaking these;
6. the principles of behaviour to be respected in order to reduce the risk of the commission of offences;
7. the obligations toward the Supervisory Body in relation to the undertaking of their tasks.

On the basis of the results of the Risk Assessment, currently, the other types of offences scheduled by Decree 231 have not been considered as relevant by Biffi, or rather:

- Article 24 bis - IT offences and the illegal handling of data;
- Article 25 bis - Offences involving counterfeit money, legal tender, stamp revenue values;
- Article 25 quater 1 - Practices of the mutilation of female genital organs;
- Article 25 quinquies - Crimes against the individual;
- Article 25 sexies - Offences of *market abuse*;
- Law 146/2006 - Transnational offences.

This decision has been taken by taking the current structure of Biffi into account, the activity that is currently being carried out by the Company itself, as well as the type of the offences indicated.

The Company undertakes to develop the continuous monitoring of its own activity, whether in relation to the aforementioned offences, or in relation to the legislative expansion that Decree 231 could be subject to. If one or more of the abovementioned offences should arise, or possible new offences that the Legislator will consider inserting within the sphere of Decree 231, the Company will assess the opportunity of integrating this Model with new special parts.

In relation to that regulated by Article 24 bis of Decree 231 (IT offences and the illegal processing of data) the Company having a project linked to the implementation of a new IT system (SAP), and this being in the development phase, the Company, also committing to carry out continuous monitoring of the risks connected with the offences being regulated, will activate the activities of risk analysis and implementation of the relative controls at the conclusion of the project.

The Biffi Board of Directors, who are responsible for entering the modifications and additions of this Model, have adopted the Organisation and Management Model. Therefore, with prior deliberation, the Board of Directors may, at any time, modify, wholly or in part, this Model in order to adapt it to new measures of law or following a process of company reorganisation.

### **3. Preliminary activity for the definition of the Model**

As described in this paragraph 2.3 (Function of the Organisation and Management Model for Biffi), the risk management system has been divided into two main phases:

- the identification of risks; and
- the planning/integration of the control system.

The aforementioned main phases include the following activities:

- the mapping of the areas at risk and instrumental areas and the related sensitive activities;
- the definition of the methods of committing the offences that are in theory ascribable to the areas at risk;
- the auditing and analysis of the existing company controls;
- the identification of the points for improvement in the control systems;
- the adjustment of the control system in order to reduce the identified risks to an acceptable level.

### **3.1 The mapping of the areas of activity that are at risk and the identification of the risks**

The highlighting of the areas at risk and instrumental areas has represented a fundamental activity for the construction of the Biffi Model.

This activity has been carried out by analysing the company context, both under the profile of the structure as well as the company operation, in order to show in which areas/sectors of activity and according to which methods the prejudicial events may be verified, for the objectives indicated by Decree 231.

In particular, from the examination of the structure and company operation, it has been possible to carry out a reconnaissance of the company areas (or processes) at risk in the sphere of which in theory the offences scheduled by Decree 231 may have been committed (or attempted), autonomously or in complicity with third parties.

Concerning the "areas at risk of offence" all the possible "instrumental areas" have therefore been considered, that is all those areas, functions, offices, company organisational units, etc. which manage or have available all the instruments, information and/or company means that could be used as support in the commission of the offences. The potential methods in which these offences may be committed in the areas singled out as being at risk and instrumental have been set out exhaustively.

It would be appropriate to show that in the undertaking of the activities of mapping of the areas and the risks, in compliance with that established in the Confindustria Guidelines, the Work Group has taken into account as a priority, the episodes that have involved the life of the Company - the so-called historic analysis - and have been the subject of an even more in-depth analysis as has been mentioned in paragraph 2.2 (Adoption of the Organisation and Management Model by Biffi).

In reference to the types of offence contemplated by Decree 231, to the creation of an inventory of the areas that are instrumental and at risk, of the connected sensitive activities and the highlighting of the methods of committing the offences, reference is made to the Special Section of the Model.

### **3.2 The Analysis of the Internal System of Control**

Following the mapping of the company areas at risk and the potential methods of committing the offences in the various company areas, an analysis has been conducted on the Internal Control System in order to verify its suitability in preventing the relevant risks.

The analysis of the Internal Control System has been carried out in particular to verify:

- the existence of behavioural rules of a general nature for the protection of the activities undertaken;

- the existence and suitability of the formalised procedures to regulate the undertaking of activities in adherence to the principles of: traceability of the acts, objectivism of the decisional process, the provision of suitable points of control;
- respect and definitive implementation of the general principle of the separation of tasks;
- the existence of an authorisation level to guarantee a suitable control of the decisional process;
- the existence of specific activities of control and monitoring on "critical" activities in relation to Decree 231.

The evaluation of the Internal System of Control has been expressly looked at within the goals of Decree 231; a documented description of the prevention control systems existing within Biffi has therefore been arranged, with the detail of the individual members of the system.

### **3.3 The Internal Control System and the methods of managing risks**

In the light of the mapping of the activities, the identification of the risks and the analysis of the Internal Control System, the residual risks have been assessed, in terms of criticality/possibility that the risk event should be verified.

Generally, the procedural system applied within Biffi has already been formalised and in this sense, all the laws, rules and procedures that Biffi has implemented also in relation to compliance with the Sarbanes-Oxley Law have been of assistance, as well as all the other rules of behaviour, procedures and internal regulations to protect the undertaking of company activities.

For each company activity the risks have been evaluated and assigned a risk priority according to the various elements that qualify the Internal Control System belonging to the Company, from the existence of behavioural rules to the existence of control and monitoring activities.

The existing processes have however been activated and integrated, focussing on the types of offence contemplated by Decree 231, in function of the organisational and operative context of Biffi, both internally and externally. Particular attention has been placed on the requirement to ensure a timely notification of the existence and emergence of possible critical situations, both general and specific. For all the risks identified at the beginning and during the course of activities, suitable documentation should be arranged that will allow a trail of the events that could have an effect on the activity.

In order to guarantee the efficacy of the Model, Biffi:

- has adopted an Ethics Code in reference to the provisions of Decree 231 to which it refers, which constitutes the basis of the Biffi Control System;

- has completed and integrated the organisational system in order to render it sufficiently formalised and clear, above all in relation to the attribution of the responsibilities in coherence with the exercising of powers and functions, adherence to the principle of separation of the functions, the provision of suitable principles of control;
- has completed and integrated the manual and computer procedures aimed at regulating the undertaking of activities and related suitable controls in order to guarantee the separation of the functions and the tasks, amongst which the phases/activities that are essential for a risk process are developed, as well as to safeguard the principles of transparency, verifiability and those that are inherent to company activity. In this sphere, particular attention has been placed on the area of financial management and the cash flows;
- they have arranged and implemented a system of management control that is able to promptly provide notification of the existence and emergence of general and/or particular critical situations, defining the suitable indicators for the individual types of risk that have been revealed;
- have supplied a communication plan for personnel and their training.

Furthermore the authorisation and signatory powers are assigned in conjunction with the defined organisational and management liabilities, with the appropriate thresholds of expenses approval.

As for the above, a series of control principles have been inserted organically within the Biffi system, amongst which are:

- every operation, transaction, action should be: verifiable, documented, coherent and congruous; therefore, for every operation, there should be adequate documentary support that will allow controls to be carried out at any time, which will confirm the characteristics and reasons for the operation and single out who has authorised, carried out, registered and verified the operation itself. In order to minimise the risks of destruction or loss, even accidental, of data, unauthorised access or handling that is not permitted or not in compliance with the rules of law, suitable safety measures have been adopted;
- no one may autonomously manage an entire process; the observance of this principle is guaranteed by the application of the principle of separation of the functions and the tasks applied within Biffi, on the basis of which various persons and functions have the responsibility for authorising an operation, to audit it, to implement the operation and/or to control it. Furthermore, no one is attributed with unlimited powers; the powers and responsibilities are defined and circulated within Biffi; the authorisation and signatory powers are in conjunction with organisational liability;
- control documentation: the control system is supported by the appropriate documentation in relation to the undertaking of controls and supervision.

## **4. The Supervisory Body**

### **4.1 Composition of the Supervisory Body and appointment**

Biffi has opted for a composition that is multisubjective and collective for the Supervisory Body, considering the aims pursued by the law and the size and organisation of Biffi.

The Supervisory Body was first established with the deliberation of the Board of Directors on 27 September 2006, the date on which the Company formally adopted the Model. During this, the Board determined the number of members, the duration of the responsibility, the authority and the powers, the responsibility and the duties of the Supervisory Body in reference to that scheduled as follows.

The Supervisory Body is appointed by the Board of Directors and remains in charge for the duration of 2 fiscal years.

The Supervisory Body is made up of 3 members that are able to be re-elected, who are internal or external to Biffi, required to have honour, professionalism, the required independence and autonomy to take on the responsibility which refers to the personal and professional characteristics required by our organisation for the Administrators or for the Auditors or those in charge of internal controls or other qualified positions. The selection of the members should therefore be carried out whilst considering the aims pursued by Decree 231 and the primary requirement of ensuring the effectiveness of the controls and the model, the suitability of the latter and the maintenance over time of its requirements, its updating and adjustment.

The Supervisory will choose a Chairman from amongst its members.

The external members of the Supervisory Body should have specific responsibilities on the subject of internal control and organisation and in legal matters.

At the time of appointment, the Board of Directors will establish the remuneration that can be expected by the members of the Supervisory Body for the tasks that they have been assigned.

Finally the Company has scheduled that the management body, during the drafting of the company budget, must approve a suitable provision of financial resources, which is proposed by the Supervisory Body itself, which the Supervisory Body may avail itself of for any requirement that is necessary for the correct undertaking of their duties (e.g. specialist consultancy, secondments, etc.) as scheduled by the Confindustria Guidelines.

### **4.2 Cessation of the responsibility**

The cessation of the responsibility due to the expiry of the term, takes effect from the time at which the

Supervisory Body is re-established. The cessation of the responsibility may furthermore occur due to renouncement, cancellation, retraction or death.

The members of the Supervisory Body who renounce their responsibility are obliged to give written communication to the Board of Directors and the Supervisory Body itself, in order that their timely substitution may be arranged.

The members of the Supervisory Body who end their responsibility due to a lack of requirements to take on the responsibility (for example, prohibition, inability, death, sentencing with a penalty that includes a ban from public office or in the case that they are judged to be culpable of the offences scheduled by Decree 231, and in general, in the event of incapacity and incompatibility, loss of requirements etc.).

The members of the Supervisory Body may be retracted for just cause by the Board of Directors, having listened to the Statutory Board of Auditors. For instance, it is just cause if there has been a lack of observance of the obligations scheduled for each member of the Supervisory Body, unjustified absence to three or more meetings of the Supervisory body, the existence of a conflict of interest, the impossibility of carrying out the activities of a member of the Supervisory Body, etc. Furthermore, the possible end of the working relationship between the member of the Supervisory Body and Biffi will normally lead to the retraction of the responsibility. The retraction of the responsibility from a member of the Supervisory Body, may be requested from the Board of Directors of the Supervisory Body itself, giving their reasons for the request.

In the event of renouncement, cancellation, retraction or death, the Board of Directors will arrange for the substitution of the member of the Supervisory Body who has been removed from the Supervisory body, having heard the Statutory Board of Auditors. The members appointed thus will remain in charge for the remaining life of the Supervisory Body.

### **4.3 Requirements of the Supervisory Body**

In reference to that scheduled by Article 6, paragraph 1 of Decree 231, the Supervisory Body has the task of supervising the function and observance of the Organisation and Management Model, to take care of the updating and is provided with autonomous powers of initiative and control.

In particular, the Biffi Supervisory Body, in compliance with that established by Decree 231 and scheduled by the Confindustria Guidelines, responds to the requirements of:

- **autonomy and independence**: since
  - (a) the control activities are not subject to any form of interference and/or conditioning by Biffi

internal subjects;

**(b)** the majority of the members of the Supervisory Body are professionals who are external to the Company;

**(c)** The Supervisory Body reports directly to the company operational management, that is the Board of Directors, with the possibility of reporting directly to the Members and the Auditors;

**(d)** equally, the Supervisory Body has not been attributed with operative tasks, nor does it participate in operational decisions and activities in order to protect and guarantee its objectivity of opinion;

**(e)** the Supervisory Body is furthermore provided with appropriate financial resources that are required for the correct undertaking of its activity;

**(f)** the internal function rules of the Supervisory Body are defined and adopted by the body itself;

- **professionals:** since the professionals within the Supervisory Body allow it to be able to draw on a wide range of competencies, whether under the profile of inspection activities and analysis of the control system, or under the profile of legal competencies, in particular of a criminal kind; for this purpose the Supervisory Body furthermore, has the ability to avail itself of company functions and internal resources, as well as external consultants;
- **continuity of action:** since the Supervisory Body is an *ad hoc* body dedicated exclusively to the supervisory activity of the function and observance of the Model and there is a suitable budget provided that is dedicated to the undertaking of their activities.

The Board of Directors having assessed the permanence of the aforementioned operational requirements and conditions of the Supervisory Body, as well as that the members of the Supervisory Body possess the required qualities of honour and competence and are not in a situation of conflict of interest in order to furthermore guarantee the autonomy and independence of the Supervisory Body.

#### 4.4 Functions and activities of the Supervisory Body

In order to guarantee the function and observance of the Organisation and Management Model, the Supervisory Body is tasked with:

- supervising the effectiveness of the Model, that is to verify the coherence between the behaviour verified and the model that has been established;
- verifying the suitability of the Model, that is, its real ability to prevent unwanted behaviour;
- verifying the maintenance over time of the required solidity and functionality of the Model;
- ensure the required dynamic update of the Model, in the assumption in which the analyses carried out show that it is necessary to carry out corrections and adjustments, by means of:
  - o presentation of adjustment proposals for the Model to the company boards/functions in order

to be able to ensure their definitive implementation and in the more significant cases to the Board of Directors,

- o follow-up, that is the verification of the implementation and the effective functionality of the proposed solutions.

In particular, amongst the functions of the Supervisory Body the following are included:

- monitor and, with the collaboration of the proposed company functions, encourage initiatives that are suitable for the circulation, awareness and understanding of the Organisation and Management Model, as well as to arrange the necessary documentation for its definite implementation, containing the instructions, the clarifications or updates;
- monitor and keep the map of the areas at risk updated, with the collaboration of the company functions that are involved;
- verify the efficiency and efficacy of the Organisation and Management Model in order to prevent and impede the commission of the offences as per Decree 231;
- verify and assess the suitability of the disciplinary system in the light of Decree 231;
- verify adherence to the methods and the procedures scheduled by the Organisation and Management Model, showing any possible behavioural gaps on the basis of the analysis of the information flows and the notifications received;
- carry out regular checks on specific operations within the areas at risk or specific acts instigated in the areas of activities at risk, with the assistance of the other company functions for a constant and better monitoring of the activities carried out in these areas;
- carry out internal investigations for the discovery of assumed violations of the prescriptions of the Organisation and Management Model;
- receive notification by the company representatives or third parties in relation to possible critical situations of the Organisation and Management Model, violations of the latter and/or any situation that might expose Biffi to the risk of offence;
- verify that that scheduled in the Special Section of the Organisation and Management Model in relation to the types of offences, responds in a suitable way to Decree 231;
- collect, process and keep (in an updated file) the documentation in relation to the procedures and to the other measures scheduled in the Organisation and Management Model, the information compiled in the undertaking of the activity of supervision, the documentation supporting the activity carried out and the meetings with company boards which the Supervisory Body covers;
- provide recommendations for the functions that are responsible for the drafting of new procedures and the adoption of other measures of an organisational nature and for the modification of the procedures and measures already applied, if necessary;

- formulate adjustment and update proposals of the Organisation and Management Model for the management body (Board of Directors or, if applicable, the Chairman of the Board or the Managing Directors) with particular regard to the necessary modifications and additions in consequence of significant violations of the recommendations of the Organisation and Management Model and/or significant variations of the internal layout of Biffi and/or the method of carrying out the company activities and/or legal modifications, as well as to verify the implementation of the proposals formulated and their functionality;
- notify the management body of the possible violations ascertained by the Organisation and Management Model that might lead to the emergence of a liability for Biffi according to and as per the effects of Decree 231, so that arrangements may be made;
- monitor the rules of law that are relevant for the effectiveness and suitability of the Organisation and Management Model in relation to company activity.

The Supervisory Body is obliged to report the results of their activity to the Managing Directors and the Board of Directors.

In particular, the Supervisory Body refers to the violations of the Organisation and Management Model found in view of the adoption of the relative sanctions and, upon verifying cases that show serious critical situations of the Organisation and Management Model, present proposals for modifications and additions.

The Supervisory Body should arrange an informative report, for the management body, on at least a six-monthly basis, on the activity of the supervision carried out and on the results of this activity and on the implementation of the Organisation and Management Model within the sphere of Biffi; this report should be sent to the Statutory Board of Auditors.

#### **4.5 Powers of the Supervisory Body**

In order to be able to best carry out their functions, described in paragraph 4.4 (Functions and activities of the Supervisory Body), it should be specified that the Supervisory Body may, in addition to that previously described:

- access all the relevant documentation in order to verify the effectiveness and the suitability of the Organisation and Management Model and request those in charge for the information that is relevant for this purpose;
- carry out, without prior notice, within the sphere of the areas at risk, spot checks on the effective observance of the procedures and the other existing control systems.

Furthermore, the activity of the Supervisory Body is not able to be challenged by any company body, structure

and function, except, however the obligation of supervision under the responsibility of the Board of Directors on the suitability of the Supervisory Body and their intervention, the Board of Directors however being responsible for the function and the efficacy of the Organisation Model.

For the undertaking of the functions of supervision attributed to the Supervisory Body, the latter has suitable financial resources available and has the power to avail themselves - under the direct supervision and responsibility - of the assistance of the internal company structures, where applicable, of the support of external consultants in reference to the company procedures that are applicable.

The regulation of the internal function of the Supervisory Body is requested from the same body, which might then define - with appropriate regulation - the aspects in relation to the undertaking of the supervision functions, including within these, the determination of the time periods of the controls, the singling out of the criteria and the analysis procedures, the verbal reports of the meetings, the regulation of the information flows and so on and so forth.

#### **4.6 Information obligations for the Supervisory Body**

The correct undertaking of the functions required of the Supervisory Body, may not be separated from the schedule of the obligations of information against this body in reference to Article 6, paragraph 2, letter d) of Decree 231. Therefore, the Supervisory Body has free access to all the functions of Biffi without the requirement of any prior consent, in order to acquire any necessary information or data, that is suitable or useful for the undertaking of the proper functions in reference to that scheduled by Decree 231, notwithstanding adherence to the rules of law on the subject of the handling of personal data.

The company functions at risk of offence are obliged to send regular reports of their control activity to the Supervisory Body, which has been put in place to implement the Organisation and Management Model (like, for instance, the summary *report* of the activity carried out, the monitoring activity, summary data), as well as the anomalies or uncharacteristic items discovered within the sphere of the available information.

Furthermore all the information that is relevant for supervisory activities should be sent to the Supervisory Body, like, for instance information in relation to:

- decisions regarding the request, provision and use of possible public finance;
- the provisions and/or news originating from bodies of the Criminal Investigation Department, or any other authority, from which the investigations should arise, even against persons unknown, for offences as per Decree 231;

- for the requests for legal assistance forwarded by employees and/or management against which the Courts are proceeding for offences as per Decree 231;
- for reports prepared by those responsible for the functions involved, from which there emerges or might emerge, behaviour that is not in accordance with the laws as per Decree 231 and which impact upon the observance of the Organisation and Management Model;
- for the news in relation to the effective implementation, at all company levels, of the Organisation and Management Model, with particular regard to the disciplinary procedures carried out and the sanctions imposed, or rather the arrangement for the archiving of these procedures with the related reasons why;
- for the news in relation to orders given by Public Bodies or subjects who carry out public service functions or in the public interest, with the summary prospects of the contracts handed out following a tender to auction or rather by private treatise.

Further information obligations are scheduled in the Ethics Code and in the Special Sections of this Organisation and Management Model. In any case, with reference to the aforementioned list of information, the Supervisory Body is tasked with requesting, if necessary and appropriate, possible modifications and additions of the information to be provided.

The personnel and all those who operate for and on behalf of Biffi who come into possession of information in relation to the commission of offences within Biffi or practices that are not in line with the rules of behaviour and the principles of the Ethics Code are obliged to promptly inform the Supervisory Body. These notifications may be transmitted, also anonymously, by means of email to the following address: [odv@vanessavalves.it](mailto:odv@vanessavalves.it). For this purpose, it should be recalled that the workers do however have a duty of diligence and obligation of loyalty to the employer as per Articles 2104 and 2105 of the Civil Code and therefore, the correct fulfilment of the obligation of information by the employer may not give rise to the application of disciplinary sanctions.

The Supervisory Body must guarantee the privacy of those who should point out any violations, with the most appropriate systems and means; the immunity that should be furthermore guaranteed to those subjects who give these possible notifications, with particular regard to unlawful forms of reprisal against them.

The information provided to the Supervisory Body is aimed at facilitating and improving the planning activities for control by the Supervisory Body and do not impose upon the Supervisory Body a systematic and prompt verification of all the phenomena represented: it is therefore given to the discretion and responsibility of the Supervisory Body to establish which cases to act upon.

## **5. Training - Communication and Circulation of the Organisation, Management and Control Model**

Biffi is aware of the importance of the circulation of the Model, the communication to the personnel and their training as to the correct and efficient function of the Organisation and Management Model for Biffi and they commit to continue to implement the disclosure of the principles contained within the Model and the Ethics Code, adopting the most suitable initiatives to encourage and circulate the awareness, diversified in accordance to role, responsibility and duties.

In particular, in order to ensure the most complete and widespread circulation of the Model, the Ethics Code and the instruments adopted by Biffi, the documents have been made available to the employed personnel of Biffi, both via computer instruments provided by the company as well as via paper instruments. Furthermore the adoption of the Model and the Ethics Code is communicated to all the collaborators, as well as being supplied with all further information about the Model and the Ethics Code. All Biffi employees are obliged to know the content of the Ethics Code and the Model (as well as the relative procedures), to observe them and contribute to their effective implementation. Suitable communication is supplied about anything that may contribute to the transparency of company activity (from rules of behaviour to authorisation powers, on the company organisational chart, the procedures, the information flows etc.). In order to guarantee the efficacy of the Model, the communication must be widespread, efficient, authoritative, clear and detailed, as well as regularly repeated.

For the third party recipients who are obliged to adhere to the Model, the summary document of this is expounded, as scheduled in Article 7, paragraph 1, l. no. 300/1970, by means of being posted in an area that is accessible to all, as well as being made available on the Company internet site.

The active circulation, communication and education of the employees schedules the development of a suitable regular training programme on the basis of a defined plan, also with the assistance of the Supervisory Body, in cooperation and coordination with the company functions that are involved, which shows the reasons for opportunity, as well as the legalities, on the basis of the Organisation and Management Model and the Ethics Code. The training activities are differentiated with regard to the role and responsibility of the parties involved, they schedule training with a higher level of specification for the so-called "senior" subjects, as well as for those that operate in the areas that are qualifiable as being "at risk" as per the Model.

In particular, the contents of the educational sessions schedule a part in relation to Decree 231 and the administrative liability of the entities (legislative sources, offences, sanctions for individuals and companies and exemptions) and a specific part on the Organisation, Management and Control Model adopted by the Company (Principles of reference for the adoption of organisational, management and control models as per Legislative

Decree 231/01, General Section and Special Section of the Model).

The adoption of the Model is furthermore communicated and circulated to all the external subjects with which Biffi has a relationship, amongst others, the suppliers, partners, collaborators, distributors, agents, consultants, etc. The communication and formal commitment by all persons, internal and external (these last where applicable), with regard to the principles contained in the Ethics Code and in the Model that are the result of suitable documentation, such as, for instance, declarations of awareness and adherence to the Model or specific contractual clauses. Suitable documentation is furthermore arranged in relation to the informative meetings, training and updating.

Biffi will not initiate or pursue any relationship with someone who does not intend to commit to the principles contained within the Ethics Code and in the Organisation and Management Model (the latter limited to any aspects that are applicable from time to time).

## **6. Disciplinary System (as per Legislative Decree 231/2001 Article 6, paragraph 2, letter e)**

### **6.1 Aims of the disciplinary system**

Biffi considers adherence to the Organisation and Management Model and the Ethics Code as essential. Therefore, in accordance to Article 6, 2nd paragraph, letter e) of Decree 231, Biffi Italia has adopted a suitable sanctioning system to be applied in the event of a lack of adherence to the laws of the Ethics Code and the procedures and prescriptions contained in the Organisation and Management Model adopted by Biffi Italia, since the violation of these laws and measures, imposed by Biffi for the prevention of offences scheduled by Decree 231, damages the relationship based on trust established with Biffi.

For the purposes of application by Biffi of the disciplinary sanctions scheduled, the establishment of possible criminal procedures and their results are not necessary, since the rules and measures scheduled in the Ethics Code and the Organisation and Management Model are adopted by Biffi in full autonomy, regardless of the offence that this conduct could determine.

In no case may illicit or illegal behaviour, or behaviour in any way in violation of the Ethics Code and the Organisation and Management Model be justified or considered less serious, even if committed in the interest or to the advantage of Biffi. Furthermore attempts are also sanctioned, and in particular, the acts or omissions that are unmistakably directed at violating the laws and regulations established by Biffi, even if the action is not carried out or if the event does not take place for any reason.

## **6.2 Sanction system against subordinate workers**

In compliance with the applicable legislation, Biffi informs their employees of the regulations, principles and rules contained in the Ethics Code and the Organisation and Management Model, by means of information and educational activities that were described above.

Violation by the employees of the regulations, principles and rules contained in the Ethics Code and the Organisation and Management Model prepared by Biffi in order to prevent the commission of offences as per Decree 231, constitutes a disciplinary offence, that is punished according to the procedures of the charges for the violations and the imposing of the consequent sanctions scheduled by the current National Collective Work Contract for Installation Engineers and Fitters, applied within the company, in accordance to that scheduled by Article 7 of the Workers Statute *herein* transcribed.

This disciplinary system has been set out with specific regard to all the provisions of law on the subject of work. There are no methods and sanctions scheduled that are different from those that have already been coded and set out in the collective contracts and union agreements. The National Collective Work Contract for Installation Engineers and Fitters in fact schedules a variety of sanctions that are able to modulate, on the basis of the severity of the offence, the sanction to be imposed. This is a disciplinary offence, in relation to the activities that are singled out as being at risk of offence:

1. The failed observance of the principles contained in the Ethics Code or the adoption of behaviour that is anyway not in compliance with the rules of the Ethics Code.
2. The failed adherence to the laws, rules and procedures as per the Organisation and Management Model.
3. The failed, incomplete, or untruthful documentation or the inappropriate storage of those that are required to ensure the transparency and verifiability of the activities being carried out in compliance with the legal procedures as per the Organisation and Management Model and the Ethics Code.
4. The violation and eluding of the control system, carried out by means of the removal, destruction or alteration of the documentation scheduled by the above procedures.
5. The hindering of controls and/or the unjustified impediment of access to the information and documentation opposed to the persons who are in charge of monitoring these, including the Supervisory Body.

The abovementioned disciplinary offences may be punished, according to the severity of the failings, with the following provisions:

- 1) verbal reprimand;
- 2) written warning;
- 3) fine;

- 4) suspension;
- 5) dismissal.

The sanctions will be set with regard to the severity of the offences: in consideration of the extreme importance of the principles of transparency and traceability, as well as the significance of activities of monitoring and control, the Company will be forced to apply measures of the greatest impact against those offences that by their very nature infringe upon the principles on which this Organisational Model is founded. Similarly, as an example, the fully autonomous management of an entire process that includes not only the authorisation phase, but also the accounting phase, from which arises (or might arise) a risk amongst those listed in the special section of this Model, could lead, following the exhaustive disciplinary procedure, to dismissal of the workers involved.

The type and the extent of each of the sanctions will be applied, keeping account of the following:

- the intentionality of the behaviour or the level of negligence, imprudence or lack of skill also in regard to the ability to prevent the occurrence;
- the overall behaviour of the worker, with particular regard to the existence or otherwise of previous disciplinary precedents by the same, within the limits of law;
- of the worker's functions;
- of the functional position and the level of responsibility and autonomy of the persons involved in the acts that have led to the breach;
- of the other particular circumstances in relation to the offence being disciplined.

The Supervisory Body is entrusted with the task of verifying and assessing the suitability of the disciplinary system in light of Decree 231. The Supervisory Body, should furthermore specifically indicate, within their regular six-monthly report, the possibility of improvement and development of this disciplinary system, above all in the light of the developments of the legislation on the subject.

### **6.3 Sanctions against the management personnel**

In the event of a violation of the Ethics Code and the Organisation and Management Model by the management, Biffi will arrange to pronounce the most suitable disciplinary measures in compliance with that scheduled by the applicable National Collective Work Contract (CCNL). Therefore, in the light of the deepest loyalty bonds that by their very nature, links the Company to the management personnel, as well as in consideration of the greater experience of the latter, violations of the measures of the Ethics Code and the Organisational Model by the managers, will incur above all expulsion provisions, as they are considered to be the most appropriate.

## **6.4 Measures against the Directors**

Upon notice of violation of the principles contained in the Ethics Code and the provisions and rules as per the Organisation and Management Model by the members of the Board of Directors, the Supervisory Body is obliged to promptly inform the whole Board of Directors and the Statutory Board of Auditors, of the adoption of the appropriate provisions amongst which for instance is the summoning of the Assembly of Shareholders in order to adopt the most suitable measures. The Supervisory Body, in its activity of information should not only report with regard to the details regarding the violations, but also to summarily indicate the appropriate other investigations that should be undertaken, as well as, if the violation should become clear, the most suitable measures to adopt (for instance, the retraction of the director involved).

## **6.5 Measures against the Board of Auditors**

Upon notice of violation of the principles contained in the Ethics Code and the provisions and rules as per the Organisation and Management Model by the members of the Statutory Board of Auditors, the Supervisory Body is obliged to promptly inform the whole Statutory Board of Auditors and the Board of Directors, of the adoption of the appropriate provisions amongst which for instance is the summoning of the Assembly of Shareholders in order to adopt the most suitable measures. The Supervisory Body, in their activity of information should not only report with regard to the details regarding the violations, but also to summarily indicate the appropriate other investigations that should be undertaken, as well as, if the violation should become clear, the most suitable measures to adopt (for instance, the retraction of the board of auditors involved).

## **6.6 Measures against Auditors**

Upon notice of violation of the principles contained in the Ethics Code and the provisions and rules as per the Organisation and Management Model (where applicable) by the Auditors, the Supervisory Body is obliged to promptly inform the Board of Directors and the Statutory Board of Auditors, of the adoption of the appropriate provisions amongst which for instance is the summoning of the Assembly of Shareholders in order to adopt the most suitable measures. The Supervisory Body, in their activity of information should not only report with regard to the details regarding the violations, but also to summarily indicate the appropriate other investigations that should be undertaken, as well as, if the violation should become clear, the most suitable measures to adopt (for instance, the retraction of the auditor involved).

## **6.7 Measures against other recipient parties**

Adherence by all those who, in any way, operate for and on behalf of Biffi and on behalf of other recipient parties of the rules of the Code of Ethics and the Organisation and Management Model (these last limited to the aspects, that are applicable from time to time), should be guaranteed by means of the prevision of specific contractual clauses.

Any violation by those who in any form, operate for and on behalf of Biffi or by the other recipient parties of the rules of the Ethics Code and the Organisation, Management and Control Model (this latter limited to the aspects that are applicable from time to time), or the possible commission by these parties of offences scheduled by Decree 231 will not be sanctioned according to that scheduled in the contracts agreed with these, which must include specific contractual clauses that have as their object the sanctions that are applicable in the event of a lack of observance, where applicable, of the Ethics Code and the Organisation and Management Model, but also via the suitable legal protective actions of the Company. For instance, these clauses could schedule the right to cancel the contract by Biffi, in the more serious cases, or the application of penalties, for minor violations.

## **6.8 Further measures**

The right of Biffi to avail themselves of all the other remedies permitted by law remains as understood, this also includes the possibility of requesting compensation for damages that are entailed by the violation of Decree 231 by all the above listed subjects.

## NATIONAL COLLECTIVE WORK CONTRACT FOR INSTALLATION ENGINEERS AND FITTERS (07/05/03)

### *Article 23 - Disciplinary provisions*

A lack of observance by the worker of the measures contained in this Contract could give rise, according to the severity of the offence, to the application of the following measures:

- (a) verbal reprimand;
- (b) written warning;
- (c) a fine not greater than three hours of hourly salary calculated on the base salary;
- (d) suspension of work and salary up to a maximum of three days;
- (e) dismissal for failings as per Article 25.

The employer may not adopt any disciplinary measure against the worker without having previously challenged the fault and without having heard their justifications.

Except for the verbal warning, the formal notice should be in writing and the disciplinary measures will not be able to be arranged before 5 days have passed, during which time, the worker will be able to present their justifications.

If the measure has not been arranged within the 6 days following these justifications, these will be considered as approved.

Workers may also present their justifications verbally, with the possible assistance of a representative of their Trade Union, or rather, a member from the Unitary Trade Union Representation.

The setting out of the provision should be requested and communicated in writing.

The disciplinary measures as per letters (b), (c) and (d) may be challenged by the workers in dealings with the worker's union, according to the contractual rules in relation to disputes.

Dismissal due to failings as per points A) and B) of Article 25 may be challenged according to the procedures scheduled by Article 7 of the Law no. 604 on 15 July 1966, confirmed by Article 18 of the Law no. 300 on 20 May 1970.

No effect of the disciplinary measures will be held in account once two years have passed since they were imposed.

### *Article 24 - Written formal warnings, fines and suspensions*

Workers will incur measures of formal written warnings, fine or suspension if:

- (a) they do not come to work or abandon their work place without a justifiable reason or rather without justifying their absence the day following the one on which the absence began, except in the case of justified impediment;
- (b) without justifiable reason delay the beginning of work or suspend it or advance its cessation;
- (c) commit slight insubordination against his/her superiors;
- (d) carry out the work entrusted to them negligently or with deliberate slowness;
- (e) due to lack of attention or negligence ruin material belonging to the establishment or work materials;
- (f) they are found to be in a state of manifest drunkenness during work hours;
- (g) outside of the company carry out work that pertains to the company itself on behalf of third parties;
- (h) contravene the smoking ban, where this exists and is indicated with the appropriate signage;
- (i) carry out within the company offices, a small amount of work on their own account or on behalf of third parties, outside of work hours and without removing company material, with the use of company equipment;
- (j) otherwise transgress the observance of this Contract or commit any breach that would prejudice discipline, morals, hygiene and safety in the work place.

The formal warning will be applied for failures of minor significance; a fine and suspension for those of greater significance.

The amount of the fines that do not constitute the compensation of damages, is devolved to the existing welfare and social security institutions of a business nature, or failing these, to the Health Insurance Fund .

#### ***Article 25 - Dismissal for absence***

##### **A) Dismissal with prior warning**

This measure is incurred by the worker who commits offences of discipline and diligence in the work place that, despite being of greater significance than those contemplated in Article 24, are not so serious as to render the sanction as per letter B) applicable.

For instance, the following are included in the offences as per the above:

- (a) insubordination to superiors;
- (b) notable culpable damage of material belonging to the company or to the work materials;
- (c) execution without permission of work within the company for one's own account or on behalf of third parties, of a small scale and without the use of company materials;
- (d) fighting in the building outside of the work departments;
- (e) abandonment of the work place by personnel who are specifically entrusted with supervision, custody, control duties, that fall outside of the cases scheduled in point (e) of the subsequent letter B);
- (f) unjustified absences for longer than 4 consecutive days or repeated absences three times in one year of the day following festivities or holidays;
- (g) sentence of a detention penalty imposed upon the worker, with the sentence beyond recall, for an action committed that is not in connection with the undertaking of their work relationship, which harms the moral standing of the worker;
- (h) a repeat of any of the failings contemplated in Article 24, when two suspension measures have been imposed as per Article 24, except for that scheduled by the last paragraph of Article 23.

##### **B) Dismissal without prior warning**

The worker who causes the company serious moral or material damage or who should commit, in connection with the undertaking of their work relationship, actions that constitute an offence in the terms of law, will incur this measure.

For instance, the following are included in the offences as per the above:

- (a) serious insubordination to superiors;
- (b) theft within the company;
- (c) theft of sketches or designs of machines and tools or other objects, or company documents;
- (d) voluntary damage of the company material or work materials;
- (e) abandonment of the work place, which could prejudice people's safety or the safety of the installations or in any case the undertaking of actions that imply this prejudicing;
- (f) smoke where this might prejudice people's safety or the safety of the installations;
- (g) execution without permission of work within the company for one's own account or on behalf of third parties, of a notable extent and/or with the use of company materials;
- (h) fighting within the work departments.

#### ***Article 26 – Non disciplinary precautionary suspension***

In the event of dismissal for failings as per point B) of Article 25 (without prior warning), the company may be able to arrange the non-disciplinary precautionary suspension of the worker with immediate effect, for a maximum period of 6 days.

The employer will communicate in writing to the worker with regard to the significant facts of the measure and will examine the possible contrary conclusions. Where dismissal is applied, this will take effect from the moment of suspension.

## **WORKERS STATUTE**

### **(Law no. 300 of 20/05/70)**

#### **Article 7** ***(disciplinary sanctions)***

1. The disciplinary laws in relation to the sanctions, the offences in relation to which each of these may be applied and the procedures to challenge these, must be brought to the awareness of the workers by means of the posting of notices in areas that are accessible to everyone. These should apply that established by work agreements and contracts, where these exist
2. The employer may not adopt any disciplinary measure against the worker without having previously contested the fault and without having heard their defence.
3. Workers may be assisted by a representative of the trade union to which they belong or whom they appoint.
4. In consideration of that scheduled by law no. 604 on 15 July 1996 disciplinary sanctions that entail definitive changes in work relations may not be arranged; furthermore the fine may not be arranged for an amount that is greater than four hours of the basic salary and the suspension of service and remuneration for more than ten days.
5. In each case, the most serious disciplinary provisions for the verbal reprimand may not be applied before five days have passed since the notification in writing of the fact that has given rise to this.
6. Except for similar procedures scheduled by the collective work contracts, and considering the right to resort to the legal authorities, the worker who has had a disciplinary sanction applied to them, may challenge this within the next twenty days, they may also do this via the association to which they are registered or rather they nominate to represent them, the establishment, by means of the local job centre, via a conciliation and arbitration board, made up of a representative from each of the parties and a third party chosen in common agreement, or, if there is no agreement, appointed by the Job Centre. The disciplinary sanction remains suspended until the pronouncement by the board.
7. If the employer should not arrange, within ten days from the invitation addressed to them from the Job Centre, to appoint their representative from the Board as per the previous paragraph, the disciplinary sanction will not take effect. If the employer should resort to the legal authorities, the disciplinary sanctions remain suspended until the judgement is given.
8. No effect of the disciplinary measures can be held in account once two years have passed since they were applied.