



Organisation, Management and Control Model pursuant to Italian Legislative Decree 231/2001

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1. General Section

1.1. Introduction

Italian Legislative Decree no. 231 of 8th June 2001 introduced in Italy a form of independent and direct criminal liability for entities, in the event that certain offences are committed in the interests of or to the advantage of those entities by persons from within their organisational structure, whether with senior roles or functions, or with subordinate roles or functions, that is, subject to supervision and direction by others.

This was a revolutionary decision by the legislature because it abolished the old conviction in force up to that point, which stated that criminal liability could not be attributed to a legal entity other than a natural person, based on the assumption that an entity lacking conscience and will was unable to commit a crime.

With the evolution of economic and legal relations and the increasingly complex fragmentation of the economic system as a whole, this rigid approach, interlocked with the same constitutional provisions, has been an obstacle to structuring a strict regulatory apparatus that is suited to combatting misconduct committed in a corporate or business environment; misconduct that is, perhaps, not new, but is certainly increasingly relevant.^{1 2}

Modern criminological studies have shown that there are forms of criminal behaviour that go beyond the actions of the person and, instead, can be traced back to an autonomous corporate policy. Consequently, the recognition of a corporate culture specific to an entity should mean that a legal person can held liable. For example, the same constant striving for results, an essential factor in the development of any production business, where not regulated or adequately calibrated on realistically (and lawfully) attainable goals, may represent the mechanism through which the person is induced by the company's policies to commit offences in that company's interests.

In this context, the introduction of corporate criminal liability into the Italian legal system was however the consequence of fulfilling specific international and EU treaty obligations undertaken by Italy.

The introduction of a form of criminal liability for legal persons was, in fact, an act imposed in a European context by the Brussels Convention, signed on 26th July 1995 with protocols signed on 27th September and 29th November 1996, and by the Second Protocol on the Protection of the European Communities' Financial Interests signed on 27th June 1997, and, in the non-EU sphere,

¹ In the Italian legal system, this concept even appears to be rooted in the Constitution: Article 27 of the Constitution, which sets out the principles regarding criminal liability and the rehabilitative purpose of punishment, has always been considered an insurmountable obstacle to introducing provisions to consider attributing criminal liability to legal persons.

² Article 27, paragraph 1, of the Constitution of the Italian Republic: 'Criminal liability is personal'. On this subject, it should be remembered that 'by virtue of the fact that an entity and its senior management have an indivisible relationship, an entity can be held liable for its actions, without breaking the constitutional principle that prevents a person from being held criminally liable for the actions of others (Article 27 of the Constitution). Nor does Legislative Decree No. 231 set out any scenario of objective liability; on the contrary, it sees a need for a type of liability known as 'organisational fault' to be put in place for entities, i.e. where an entity fails to put in place sufficient preventive measures to ensure that the offence in question is not committed; identifying this organisational deficit allows an entity to be fully and easily prosecuted for any criminal offence committed in its sphere of operations" (Italian Supreme Court of Cassation no. 27735 of 16th July 2010).

by the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17th December 1997³.

1.2. The legal nature of corporate liability pursuant to Italian Legislative Decree 231/2001

The liability introduced by Legislative Decree No. 231/2001 (the '**Decree**') has characteristics of both administrative and criminal law.

Both *nomen iuris*, which defines an entity's liability as administrative, and the statute of limitations for an offence charged against an entity, which does not follow the rules of the criminal statute of limitations, fall under administrative law. However, it does provide for an autonomous five-year period which is suspended for the entire duration of the trial and which, for this feature, falls under the model proper to administrative offences, contained in Italian Law no. 689/81.

Similarly, the regulations regarding modifications to entities provides for the transfer of liability from the original entity to the one arising from transformation, merger, and demerger. This is because the financial liability of the company in the context of which the offences were committed is entirely autonomous and separate from the corporate affairs following the commission of the offence. The fact that Italian Legislative Decree no. 231/2001 does not establish a system of conditional suspension of sentences, a characteristic feature of the criminal sentencing system, has been interpreted as a further indicator of the administrative nature of the liability introduced by the provision in question.

On the other hand, some provisions of Italian Legislative Decree 231/2001 are purely criminal in nature⁴. Firstly, the fact that the criminal offence and the unlawful conduct on which the offence depends are identical; the most authoritative legal theory describes this as conspiracy, whereby the conduct of the natural person, who actually commits the offence, is linked to that of the legal person since the natural person is acting in the interests and to the advantage of the legal person. Moreover, '231' offences fall under the jurisdiction of the criminal justice system, i.e. the Public Prosecutor's Office is the competent body for conducting investigations into predicate offences in order to ascertain the liability of the entity whose 'name' is entered in a special register of (legal) persons under investigation kept and updated by the Public Prosecutor's Office; in the event that proceedings pass the preliminary investigation stage, an entity's liability will be ascertained by whichever criminal court has jurisdiction even where a decision is made not to proceed against the natural person or where the perpetrator of the offence is not identified⁵.

³ The international sources have not, however, provided indications as to how to ascertain the liability of legal persons, but have limited themselves to requiring the introduction of criminal offences for offences committed on behalf of companies within the jurisdictions involved; this is to avoid possible distortions of the competition rules of the single market.

⁴ The criminal nature of the liability pursuant to Italian Legislative Decree 231/2001 is also suggested by: i) the fact that attempted offences can also be punished (Article 26), ii) the principle of the succession of laws over time and the provision for applying retrospectively the more favourable law (Article 3), iii) the extraterritorial significance attributed to the offence committed by the entity (Article 4).

⁵ With regard to the choice of criminal court, the Ministerial Report to Italian Legislative Decree 231/2001 clarifies that the reason for this intervention is twofold and derives from the need for the entire system to be both effective and guaranteed. On the one hand, it has been noted that the investigative powers granted to public administration bodies by Italian Law 689/1981 are insufficient to meet the requirements for ascertaining an entity's liability. Since a criminal offence is one of the conditions for attributing liability, the tools granted to law enforcement authorities for conducting criminal investigations must also be made available here, given they are much more wide-ranging and comprehensive than the arsenal of investigative powers provided by Italian Law 689/1981. On the other hand, the administrative criminal nature of the offences committed by the entity, due to the fact that comprehensive prohibitory penalties can be applied

The Ministerial Report to Italian Legislative Decree No. 231/2001 specified that this legislation gave rise to a *tertium genus* [third level]⁶ of liability that: '*combines the essential features of the criminal and administrative systems in an attempt to ensure it is effective at preventing offences whilst, even more importantly, providing maximum guarantees*' and has thus structured a separate piece of legislation which contains elements of both criminal and administrative systems⁷.

1.3. Scope of application (Article 1)

Article 1 of Italian Legislative Decree 231/2001 defines the subjective scope of criminal/administrative liability arising from offences.

Paragraph 1 of Article 1 uses the concept of 'entity' and not the more specific concept of 'legal person', revealing the legislature's intention to also extend the liability introduced by the legislation in question to entities without legal status. The legislature decided to include a wide ranging intended audience in Decree 231/01, who, regardless of their formal legal status, have a level of autonomy that is distinct from the natural persons who make up their structure.

Italian Legislative Decree 231/2001 is aimed at entities with legal status such as:

- Partnerships and companies;
- Associations and Foundations (including non-profit organisations);
- Credit and Insurance Institutions⁸;
- Economic public bodies and companies and associations, including those without legal status, such as: a) temporary business associations, b) de facto companies, c) *Società tra*

pursuant to the criminal code and resulting from the link to the offence committed, requires a much more effective system of guarantees than the, admittedly meagre, one provided by Italian Law 689/1981. As a result, it was decided to essentially put entities on an equal footing with defendants, so entities may enjoy all the guarantees to which defendants are entitled'.

⁶ Italian Supreme Court of Cassation, Criminal Section VI. has expressed itself on this point in a passage of judgment no. 27735 of 16th July 2010: 'Italian Legislative Decree 231/2001 has introduced a *tertium genus* [third level] of liability in addition to the traditional systems of criminal liability and administrative liability, providing for making an entity administratively liable in the event of the commission, in its interest or to its advantage, of one of the offences expressly listed in Section 3 by a person holding a senior position, on the assumption that the offence has been committed by the entity, for which it must be held liable'.

⁷ Such an interpretation was subsequently endorsed by the majority of case law and by the United Sections of the Italian Supreme Court of Cassation in its decision concerning the accident that occurred at the Thyssen Krupp plant in Turin (Italian Supreme Court of Cassation, United Criminal Sections 05/03/2014). The Supreme Court reconstructed the case law guidance formed on the subject over the years, noting that: (i) in the first instance [i.e., under criminal law], the entity would be deemed administratively liable (including Italian Supreme Court of Cassation, United Sections, judgment 34476 of 23/01/2011); (ii) in the second instance [i.e., under administrative law], (Italian Supreme Court of Cassation, United Sections, judgment no. 26654 of 27/03/2008), liability should, instead, be recognised as being criminal in nature, since Italian Legislative Decree 231/2001 'introduced into law a specific and innovative punitive system for collective entities, endowed with specific rules on the structure of the offence, the penalising apparatus, the liability for assets, changes concerning the entity, proceedings relating to knowledge of and commission of the offence [...]'; (iii) finally, a third strand of case law (Italian Supreme Court of Cassation, Section VI, judgment no. 27735 of 18/02/2010) held that Italian Legislative Decree 231/2001 introduced a 'tertium genus' [third level] of liability, holding an entity separately liable in the event of the commission, in its interest or to its advantage, of one of the predicate offences by a person in a senior management position. Therefore, the Supreme Court decided to adopt the last hypothesis set out, considering the system provided for by Italian Legislative Decree 231/2001 as a legislative 'corpus' of particular importance, a 'tertium genus' [third level] that combines the features of the criminal and administrative systems.

⁸ Italian Legislative Decree 231/2001 is also aimed at securities brokerage companies, savings management companies, and investment companies, for which certain derogations are set out which are necessitated by the need to coordinate with banking legislation and regulatory provisions, in particular with regard to interim proceedings and relations with the Bank of Italy in the Preliminary Investigation stage.

professionisti [professional corporation/limited liability partnership], d) Sole Shareholder Companies;

- Public limited companies, local health authorities and hospital trusts⁹.
- Church entities with legal status, Cooperatives and Committees without legal status (according to theory law).

The following entities fall outside the scope of Italian Legislative Decree 231/2001:

- the State and territorial public bodies;
- political parties and trade unions as bodies with constitutional importance;
- non-economic public bodies, such as Ministries, Prefectures, Courts, Superintendencies, CNR [Italian National Research Council], INPS [Italian National Social Security Institute], INAIL [Italian National Institute for Insurance against Accidents at Work], ISTAT [Italian national statistics agency], CONSOB [Italian securities market regulator], ISVAP [Italian insurance regulator];
- Entities without legal status such as Church entities without legal status, apartment buildings, family enterprises, capital funds, trusts.

1.4. The principle of legality (Article 2)

Article 2 of Italian Legislative Decree 231/2001, which states that '*An entity cannot be held liable for an act constituting an offence if its administrative liability in respect of that offence and the relevant penalties are not expressly provided for by a law that came into force before the act was committed*' proposes a wording that is almost identical to that of Article 1 of the Italian Penal Code, which expressly refers to the principle of legality under which an entity subject to the '231/2001' rules cannot be held liable if the alleged offence and the relevant penalties are not indicated in the list of offences covered by the Decree (in Articles 24 and 25) or in any case provided for in a specific law that must have come into force before the act was committed.

The catalogue of predicate offences contained in Articles 24 and 25 of the Decree is now significantly larger than when the legislation first came into force and currently includes the following criminal offences:

- Misappropriation of funds, fraud committed against the State or a public body or to obtain public funding or IT-related fraud against the State or a public body and fraud in public procurement (Article 24, Italian Legislative Decree 231/2001) [This Article was modified by Italian Legislative Decree no. 75 of 14th July 2020];
- Computer crimes and unlawful processing of data (Article 24-bis, Italian Legislative Decree 231/2001) [Article added by Italian Law 48/2008; amended by Italian Legislative Decree 7/2016 and 8/2016, updated by Conversion Law no. 133 of 18/11/2019];
- Organised crime offences¹⁰ (Article 24-ter, Italian Legislative Decree 231/2001) [Article added by Italian Law 94/2009, amended by Italian Law 69/2015 and subsequently by Italian Law 236/2016];

⁹ These are entities that, while exercising a public service, are a separate business and have a corporate structure which enables them to pursue their business activities cost effectively. It should be noted that the inclusion of ASLs [Local Area Health Authorities] and ASOs [Hospital Businesses] among those entities included in the scope of legislation on the administrative liability of entities is the subject of debate in theory law and that it was originally excluded from the Ministerial Report to the Decree, nevertheless many of these entities have adopted Organisational Models in accordance with Italian Legislative Decree 231/2001.

¹⁰ The introduction of associative offences among the '231/01' predicate offences means that a legal person can be held liable in the event that an offence of conspiracy is committed by its senior management or subordinate persons in its interest or to its advantage, regardless of whether the specific offence to which the action is directed falls within the list

- 'Embezzlement, bribery, improper induction to give or promise valuables', corruption and abuse of office (Article 25, Italian Legislative Decree 231/2001) [Article amended by Italian Law 190/2012 and Italian Law no. 3 of 9th January 2019 and amended by Italian Legislative Decree no. 75 of 14th July 2020];
- Forgery of money, public credit cards, revenue stamps and forms of identification (Article 25-*bis*, Italian Legislative Decree 231/2001) [Article added by Italian Legislative Decree 350/2001, converted with amendments by Italian Law 409/2001; amended by Italian Law 99/2009; amended by Italian Legislative Decree 125/2016];
- Crimes against industry and trade (Article 25-*bis.1*, Italian Legislative Decree 231/2001) [Article added by Italian Law 99/2009];
- Corporate offences (Article 25-*ter*, Italian Legislative Decree 231/2001) [Article added by Italian Legislative Decree 61/2002, amended by Italian Law 190/2012, by Italian Law 69/2015 and subsequently by Italian Legislative Decree 38/2017];
- Crimes for the purpose of terrorism or subversion of the democratic order provided for by the Italian Penal Code and special laws (Article 25-*quater*, Italian Legislative Decree 231/2001) [Article added by Italian Law 7/2003];
- Practices of female genital mutilation (Article 583-*bis*, Italian Penal Code) (Article 25-*quater.1*, Italian Legislative Decree 231/2001) [Article added by Italian Law 7/2006];
- Crimes against the person (Article 25-*quinquies*, Italian Legislative Decree 231/2001) [article added by Italian Law 228/2003; amended by Italian Law 199/2016 and subsequently by Italian Law 236/2016 and then again by Italian Law no. 110 of 14th July 2017];
- Market abuse offences (Article 25-*sexies*, Italian Legislative Decree 231/2001) [article added by Italian Law 62/2005];
- Manslaughter and personal injury due to negligence, committed by violations of accident prevention and workplace health and safety laws (Article 25-*septies*, Italian Legislative Decree 231/01) [Article added by Italian Law 123/2007];
- Receiving, laundering, and using money, goods, or valuables of unlawful origin, as well as money laundering (Article 25-*octies*, Legislative Decree 231/2001) [Article added by Italian Legislative Decree 231/2007; amended by Italian Law 186/2014];
- Crimes relating to non-cash payment instruments (Article 25-*octies.1*, Italian Legislative Decree 231/2001) [Article added by Italian Legislative Decree 184/2021];
- Crimes related to copyright infringement (Article 25-*novies* Italian Legislative Decree 231/2001) [Article added by Italian Law 99/2009];
- Inducement not to make statements or to make untrue statements to law enforcement authorities (Article 25-*decies*, Italian Legislative Decree 231/2001) [Article added by Italian Law 116/2009];
- Environmental offences (Article 25-*undecies*, Italian Legislative Decree 231/2001) [article added by Italian Legislative Decree 121/2011, amended by Italian Law 68/2015];
- Employing third country nationals who have no legal right to stay (Article 25-*duodecies*, Italian Legislative Decree 231/2001) [Article added by Italian Legislative Decree 109/2012];

of Articles 24 and 25, Italian Legislative Decree 231/2001. Therefore, by encouraging or assisting an offence, an entity may be held administratively liable for offences other than the predicate offences, which makes it more difficult to map the risks with regard to the company's typical activities.

- Racism and xenophobia (Article 25-*terdecies*, Italian Legislative Decree 231/2001) - [Article added by Italian Law no. 167 of 20th November 2017 to fully implement Framework Decision 2008/913/JHA of the Italian Ministry of Justice and Home Affairs];
- Fraud in sports competitions and abusive gambling or betting and gambling with the use of banned equipment (Article 25-*quaterdecies*, Italian Legislative Decree 231/2001) [Article added by Article 5, Italian Law no. 39 of 3rd May 2019];
- Tax offences (Article 25-*quinquiesdecies*, Italian Legislative Decree 231/2001) [Article added by Italian Legislative Decree no. 124 of 26th October 2019 coordinated with Italian Conversion Law no. 157 of 19th December 2019 and amended by Italian Legislative Decree no. 75 of 14th July 2020];
- Smuggling (Article 25-*sexiesdecies*, Italian Legislative Decree 231/2001) [Article added by Italian Legislative Decree no. 75 of 14th July 2020];
- Attempted offences (Article 26, Italian Legislative Decree 231/2001);
- Liability for entities for administrative offences through the commission of criminal offences (Article 12, Italian Law no. 9/2013) [A prerequisite for entities operating in the virgin olive oil supply chain sector];
- Transnational offences (Italian Law 146/2006 as amended by Italian Law 236 /2016).

1.5. Penalties (Articles 10–23)

Italian Legislative Decree 231/2001 sets out the penalties enforceable against a company as a consequence of the commission or attempted commission of the offences mentioned above:

- a fine of up to EUR 1,549,370.69 (and an interim order for seizure)¹¹. This financial penalty is determined by the criminal court using a system based on a number of 'units'. The minimum number of units is one hundred and the maximum number is one thousand. Each unit is valued at an amount that varies between a minimum of EUR 258.22 and a maximum of EUR 1,549.37. In calculating the fine, the court shall determine:
 - the number of units, taking account of the seriousness of the act, the company's level of liability, and the activities performed to eliminate or mitigate the consequences of the event and to prevent further offences being committed;
 - the value of the individual unit, based the company's economic situation and its assets.
- prohibitory penalties (also applicable as a precautionary measure) of a duration of no less than three months and no more than two years (with the clarification that, pursuant to Article 14, paragraph 1, Italian Legislative Decree 231/2001, '*Prohibitory penalties are based on the specific activity to which the entity's offence refers*') which, in turn, may include:
 - disqualification from business activity;
 - suspension or withdrawal of authorisations, licences or concessions relating to the criminal offence committed;
 - a ban on entering into contracts with public sector bodies;

¹¹ The system used to determine financial penalties implemented using units set out in Article 25-*sexies*, paragraph 2, Italian Legislative Decree 231/2001 on market abuse, is different. Article 25-*sexies* states: 'If an entity has obtained product or profit of significant size as a result of the commission of the offences referred to in paragraph 1 (market abuse, ed.), the penalty is increased to up to ten times the amount of product or profit'. Penalties are not only largely left to the Judge's discretion, but can reach very high levels, and can even lead to the confiscation of the profit. It should also be noted that if one of the tax offences included in the catalogue of predicate offences set out in Article 25-*quinquiesdecies*, Italian Legislative Decree 231/2001, has been committed, legislation states that if, as a result of this offence, an entity has obtained a significant profit, the financial penalty is increased by one third.

- exclusion from incentives, loans, contributions, or subsidies, and the potential revocation of those already granted;
- a ban on advertising goods or services;
- confiscation of the proceeds of the crime (and interim order for seizure);
- publication of the judgment (where a prohibitory penalty has been applied).

Prohibitory penalties apply only to offences which they are expressly provided for, provided that one of the following conditions is met:

- the company derived a significant profit from the commission of the offence and the offence was committed by persons in a senior position or by persons subject to the direction of others when the commission of the offence was determined or facilitated by serious organisational deficiencies;
- in the event of repeated offences.

The court determines the type and duration of the prohibitory penalties, taking into account whether the penalty is sufficient to prevent offences of the type committed and, if necessary, may apply them jointly (Article 14, paragraphs 1 and 3, Italian Legislative Decree 231/2001).

For the most serious cases, disqualifications from business activity, bans on entering into contracts with public sector bodies and bans on advertising goods or services, may be applied on a permanent basis. Please note that, pursuant to and under the terms and conditions of Article 15, Italian Legislative Decree 231/2001, a court may appoint a commissioner to continue the company's activity (instead of imposing a penalty).

If one of the predicate offences for the purposes of attributing administrative liability to an entity, has been attempted but not actually realised, the financial penalties (in terms of amount) and prohibitory penalties (in terms of time) are reduced by between one third and one half, while penalties are not imposed in cases where the entity has purposefully prevented the performance of the action or the realisation of the event (Article 26, Italian Legislative Decree 231/2001). The exclusion of penalties is justified, in this case, because there is no conspiracy between the entity and the person(s) who are assumed to have acted in its name and on its behalf. This is a special case of 'active withdrawal', provided for in Article 56, paragraph 4, Italian Penal Code.

1.6. Principle of non-retrospective application (Article 3)

Article 3, paragraph 1, Italian Legislative Decree 231/2001 states that: *'An entity may not be held liable for an act which, according to a later law, no longer constitutes an offence or no longer provides for holding an entity administratively liable for it, and if there has been a conviction, its execution and legal effects shall cease'*. Here too, the Decree incorporates a basic principle laid down in the Italian Penal Code regarding the timescale of punitive rules, under which a legal person cannot be subject to an administrative penalty when:

- the law no longer recognises the predicate offence as an offence;
- an offence is no longer included in the list of predicate offences set out in the Decree. In this case, if there is a definitive conviction, its execution and all legal effects cease.

The second paragraph of Article 3 applies the criminal law principle of *'favor rei'* [favouring the accused] and states that: *'if the law of the time in which the offence was committed and subsequent laws are different, the law whose provisions are more favourable shall apply, unless an irrevocable ruling has been made'*. Therefore, in the case of succession of laws over time, the one most favourable to the entity must be applied, with the only limitation being where a binding judgment has been made.

Finally, the third paragraph excludes the applicability of the rules in the first two paragraphs in the case of exceptional and temporary laws.

1.7. Principle of territoriality (Article 4)

Article 4 of the Decree states that all entities with their head office in the territory of the state are subject to the law on administrative liability, even if the offence has been committed outside national territory. If an offence is committed abroad, the Italian courts have jurisdiction by virtue of the criteria laid down for natural persons in Articles 7 to 10, Italian Penal Code, but it does not apply if the foreign state in whose territory the offence was committed decides to prosecute the entity.

Italian courts have jurisdiction even if only a segment of the criminal conduct has been committed on Italian territory.

In the not infrequent event of predicate offences being committed in Italy by foreign entities, case law has repeatedly affirmed the jurisdiction of the Italian courts, regardless of whether the foreign entity has an office in Italy. Case law on merit and legitimacy states that if foreign entities were not held administratively liable for an offence pursuant to Italian Legislative Decree 231/2001, it would create an unacceptable disparity of treatment between foreign entities and entities acting within the Italian economic and social system¹².

Therefore, entities with their head office in Italy will be liable for offences committed in Italy in their interest or to their advantage as provided for in Article 6 of the Decree (as set out below) and for offences committed abroad, within the limits set by Article 4 thereof; on the other hand, entities with their head office abroad will not be liable if the offence is committed entirely abroad. If, on the other hand, the offence is committed in their interest or to their advantage, even in part, on Italian territory, Italian jurisdiction and the provisions of Italian Legislative Decree 231/2001 apply.

In a nutshell, where an offence is committed abroad, the provisions of the Decree apply when

- the offence is committed abroad by a person functionally linked to the entity, pursuant to Article 5, paragraph 1, Italian Legislative Decree 231/2001;
- the entity has its head office in the territory of the Italian State;
- the entity may be liable only in the cases and under the conditions provided for in Articles 7, 8, 9, 10, Italian Penal Code (in cases where the law provides that the offender - a natural person - is punished at the request of the Minister of Justice, proceedings are brought against the entity only if the request is also made against the entity itself);
- if the cases and conditions provided for in the above articles of the Italian Penal Code exist, the State of the place where the act was committed shall not prosecute the entity.

1.8. Objective prosecution criteria (Article 5)

The liability of Entities introduced by Italian Legislative Decree 231/2001 is structured on the commission of a predicate offence in the interest or to the advantage of an Entity, by a natural person within its organisation or corporate structure.

In particular, Article 5 states that:

¹² In the court proceedings concerning the Viareggio railway disaster, the Court of Appeal of Florence specified how exempting foreign entities without a registered office in Italy from being held administratively liable under Italian Legislative Decree 231/2001 'would create intolerable disparities of treatment with respect to companies carrying out the same activity and perhaps also foreign companies that have a registered office or branch in Italy, because they would always be exempt from prosecution and strict penalising treatment, to which instead the latter would always be subject' (See Court of Appeal of Florence, Section III, 16/12/2019, confirmed by Court of Lucca, 31/07/2017).

'1. An entity is liable for offences committed in its interests or to its advantage:

a) by persons who fulfil roles of representation, administration, or direction within the entity or within one of its financially and administratively autonomous organisational units, and any persons who carry out management and control of the entity, including on a de facto basis;

b) by persons subject to the direction or oversight of one of the persons specified in section a).

2. An entity is not liable if the persons indicated in paragraph 1 have acted exclusively in their own interests or in the interests of third parties'.

1.8.1. Subordinates or senior management

The link between the person committing the offence and the entity is therefore the logical legal assumption that underpins the overall structure of the Decree.

The entity, as the subject of interest that has given rise to the offence, will therefore have to answer for the offences committed by:

- members of senior management who, according to the definition set out in subparagraph (a) of the above provision, hold functions of representation, administration, or management within the entity or within one of its financially and functionally autonomous organisational units, or who manage and control the entity, including on a de facto basis;
- subordinates who are subject to direction and oversight by senior management.

In the mechanism for attributing liability to an entity as defined by the Decree, the distinction between senior management and subordinate staff is a fundamental one, because each category is subject to a significantly different set of provisions, essentially with regard to the distribution of the burden of proof between prosecution and defence.

The legislature has established what function(s) are used to define the who is part of senior management, that is, a person who forms an entity's will and defines its corporate policy, regardless of the position he or she holds within that entity (it being understood that senior management must in any case perform one or more of the three activities laid down in the legislation, i.e., representation, administration, or management).

Members of staff certainly fall within the category of senior persons, whereas staff employed through certain special or even general power of attorney should come under the category of subordinates, since they are subject to reporting obligations that are more in line with the position of someone who is subject to the direction and supervision of others.

Persons who perform administrative functions include members of the Board of Directors and all those persons who hold governance and management roles within the entity, regardless of whether or not they have executive powers; senior management roles also include non-executive directors and those without delegated responsibilities, as well as independent directors and those with an employment contract with the entity.

For management tasks, this mainly refers to general managers who, despite being employees of the entity and not a governing body, have central operational importance and, as such, have access to an extremely broad range of decision-making powers.

Senior management also includes those who perform the above functions within an organisational unit with financial autonomy. For example, branch managers, despite being subject to head office management and in any case under a certain level of control, are nevertheless invested with decision-making powers not dissimilar to those of general managers. Generally speaking, it can be said that management of an organisational unit requires significant financial and functional

autonomy, and persons in this role will qualify as being senior management. However, each case must always be assessed individually on its merits¹³.

Moreover, the provisions explicitly set out an equivalence between formal roles and actual situations, thus senior management will also include those persons who, in practice, perform management and control activities. When looking at cases in this way, if a person is able to determine an entity's general strategies and actual operational conduct, exercising significant control over it, he or she can be considered to be a member of an entity's senior management. The extent of the de facto power can be identified as a person who has taken regular action that constitutes continuous management of the enterprise in accordance with the method outlined in Article 2639, Italian Civil Code¹⁴.

For the purposes of Italian Legislative Decree 231/2001, senior management does not include statutory auditors and persons who perform only audit and/or supervisory roles, that is, those persons who are not endowed with management powers, such as members of the Supervisory Board ('SB').

With regard to subordinate staff, the legislature has chosen to apply to personnel subject to the supervision and management of others the rules that attribute administrative and criminal liability to an entity for offences committed in its interests by natural persons. This application is necessary to prevent entities implementing mechanisms (by those who govern it) in order to avoid liability by taking advantage of the division and compartmentalisation of roles and functions typical of complex organisations that are increasingly characterised by a sizeable framework of roles.

Classifying and categorizing subordinates is not always straightforward. Interpretations differ in that some readings of the legislation restrict the category of subordinate only to those who are in a stable subordinate relationship with the entity and are therefore included in its organisational chart, and others that instead consider that subordination relevant for the purposes of Article 5 of the Decree is of a more substantial nature, including all those who perform a given task under the direction and control of the entity's senior management with effects on the entity's legal sphere. This interpretation of the legislation means that external contract workers, consultants, sales, or distribution employees such as agents and dealers should be considered as subordinates.

In case law, the prevailing opinion favours the substantive reading of the legislation: the prerequisites for applying precautionary measures, for example, are deemed to exist even with respect to actions carried out by persons outside the corporate structure, as in the case of consultants¹⁵.

A practical example of the distinction between senior management and subordinate staff can be seen in the area of workplace health and safety, whereby the category of senior management includes not only the employer but also those managers who, although they are carrying out the employer's directives, can autonomously organise work activity and exercise stringent powers of

¹³ The Decree says nothing about the system of responsibilities. For each case, a check will have to be performed regarding what powers are delegated and, where the delegated person is in fact called upon to exercise powers typical of a senior management function, he or she may be qualified as such, even where certain powers remain with the delegator.

¹⁴ Article 2639, paragraph 1, Italian Civil Code: "For the offences set out in this section, a person formally appointed to the role or holder of the function set out in civil law shall be deemed as being both the person who is required to perform that function, despite being appointed elsewhere, and the person who continuously and significantly exercises the powers typically inherent in the role or function."

¹⁵ See Court of Milan, 28/10/2004 Siemens

control. Conversely, line managers who supervise their subordinates, but do not hold organisational and management roles, fall under the definition of subordinate. Subordinates also include competent doctors and health and safety (H&S) managers. H&S managers act only as consultants to the employer and do not have decision-making autonomy.

1.8.2. Interest or advantage

Article 5 of the Decree states that criminal conduct carried out in the interests or to the advantage of an entity is an objective principle for holding an entity criminally and/or administratively liable for that conduct. The Ministerial Report and the prevailing case law both take the expression '*in the interests or to the advantage of*' literally, meaning that the two concepts can be applied separately and alternatively for the purposes of attributing liability to an entity.

Thus, 'interests' relates to the purpose of the criminal action, typically the improper enrichment of the entity; however, this enrichment need not actually materialise. On the other hand, 'advantage' is seen in objective terms and concerns the consequent effects of the offence on the entity. Obviously, if an advantage can only be ascertained after the fact, the interests must be ascertained by assessing the conduct prior to the offence i.e., considering the time the offence was committed, by making a prognostic projection of the advantage that the entity may obtain (as a consequence of the unlawful conduct).

Case law has already pointed out at an early stage that '*the expression included in the legislation (interest or advantage, ed.) is not tautological, because the terms refer to legally different concepts, since it is possible to distinguish beforehand an interest as being improper enrichment, premeditated but perhaps not realised, as a consequence of an offence, from an advantage that has been objectively achieved by the commission of the offence, even if not forecasted beforehand, so that an entity's interest and advantage are not the same thing*¹⁶. According to case law, an interest and an advantage are separate and alternative concepts, so that by establishing the existence of only one of them will be sufficient to hold an entity criminally and/or administratively liable.

There is also a different reading of the expression 'interest or advantage' that considers it as being tautological which, in reality, would express a unitary meaning through the use of two synonyms; it should be noted that such an interpretation of the legislation, although proposed by authoritative legal theory, has not been applied successfully. The United Sections of the Italian Supreme Court has expressed themselves in their decision in the *Thyssenkrupp* case, stating that '*interest and advantage are alternative and separate concepts, since an entity's interest expresses an assessment of the purpose of the crime (...) while an advantage has an essentially objective meaning and, as such, is assessable after the fact, based on the effects actually derived from the offence*¹⁷.

As will be discussed in more detail in the Special Section of this Organisation, Management and Control Model (the '**Model**' or also the '**Organisational Model**') dedicated to workplace health and safety and environmental offences, the criteria for establishing an entity's interest and advantage have posed some problems in terms of interpretation in their application to punishable predicate offences. In fact, it has been noted that it is difficult to logically reconcile the above criteria for attributing liability to an entity with the occurrence of harmful events such as injuries or manslaughter due to violation of accident prevention regulations, given that in no case can such events be supported by an interest or procure any advantage whatsoever to the entity on whose

¹⁶ See Italian Supreme Court of Cassation, Section II, 30/11/2006 no. 3615, Jolly Mediterraneo S.r.l.

¹⁷ See Italian Supreme Court of Cassation United Criminal Sections, 24/04/2014, no. 38343, Thyssenkrupp

premises they occur; the entity would inevitably suffer economic and reputational damage in such circumstances.

On this point, case law has pointed out that in the culpable offences in question, the criteria for attributing liability to an entity – interest and advantage – must distinguish the conduct, since they cannot be supplemented by the unfortunate event that is not intended by the agent and is therefore not in the agent’s interest or that of the entity within whose environment the agent works. With regard to culpable offences, it may be argued that an entity has an interest or advantage when the person has acted in breach of health and safety regulations, for example by (i) enabling the entity to avoid the cost of providing appropriate accident prevention measures, (ii) speeding up working time and increasing productivity, (iii) saving on employee training, and in general creating a company policy aimed at making savings on health and safety costs.

On this point, the *Thyssenkrupp* judgment specified that *'the concepts of interest and advantage, in culpable offences of event, must necessarily refer to the conduct and not to the unlawful outcome (...) this solution does not give rise to any logical difficulty: it is quite possible that conduct that breaches the precautionary rules and is therefore [deemed to be a] culpable [offence] is carried out in the interest of the entity or in any event leads to an advantage being achieved. (...) If this solution is not seen as inconsistent, it is quite possible for an agent to knowingly break the law, or even foresee the event that may result from it, without intending to do so, in order to act in line with the entity's strategies. Moreover, it is entirely possible for an entity to gain an advantage through a law being broken'*.

This orientation has characterised the subsequent pronouncements of the Italian Supreme Court, which in a recent decision stated that: *'assessing [whether an act was committed in] an entity's interest and advantage, refers to the conduct of the agent and not to the event, and apply to instances when the perpetrator of the offence has broken the law with the conscious intention enabling the entity to make cost savings, regardless of whether those savings were actually realised, or when he or she has systematically broken accident prevention laws, objectively obtaining an advantage for the entity, in the form of making cost savings or maximising production, regardless of whether he or she had the intention to do so'*¹⁸

1.8.3. The exclusive interest of the agent

Article 5, paragraph 2 of the Decree specifies that an entity cannot be held liable if the persons identified in the first paragraph, i.e., senior management and subordinates, have acted solely in their own interests or in the interests of third parties¹⁹.

¹⁸Italian Supreme Court of Cassation Criminal Section IV, 21/03/2019, no. 28097

¹⁹ The Explanatory Report to Italian Legislative Decree 231/2001, in the part relating to Article 5, paragraph 2, Italian Legislative Decree 231/2001, states: 'The second paragraph of Article 5 of the schedule borrows the closing clause from subsection (e) of the mandate, stating that an entity cannot be held liable if natural persons (whether a member of senior management or subordinate) have acted exclusively in their own interests or in the interests of third parties. The rule condemns cases of "breaking" the pattern of a natural person and entity being organically linked, i.e., it refers to cases in which the natural person's offence is in no way attributable to the entity because it is not carried out even in part in its interest. And it should be noted that, where it is established that the entity is not liable, the court need not verify whether it has by chance derived an advantage (the provision thus operates as an exception to the first paragraph).'

Assonime [Association of Italian Joint-Stock Companies] Circular 5/19 states that: The Administrative Liability of Entities, cit., 5, states the following: 'The wording of Article 5, paragraph 1, cited above (presence of the disjunctive preposition "or") thus seems to allow entities to be held liable both when, despite having acted for that purpose, no benefit is brought to the entity and when, despite not having acted for that purpose, a benefit is brought to the entity. The law adds, however, that an "entity shall not be liable if the persons (...) have acted solely in their own interest or in the interest of third parties" (Article 5, paragraph 2). The two provisions are not easily reconciled. The Explanatory Report

The provision refers to the scenario where an entity cannot be held liable for an offence, since it is not possible to identify an entity's interest, and with it the possibility or the right to impose a penalty upon an entity for an agent's conduct.

This provision refers only to the concept of interest, but not to the concept of advantage; consequently, an entity will not be held liable even if it receives an advantage from the person's conduct because this increase in assets is entirely fortuitous and therefore not attributable to its will.

1.9. Subjective prosecution criteria (Articles 6 and 7)

Articles 6 and 7 of the Decree regulate the criteria for prosecuting an entity for an offence based on an assessment of its liability for the conduct of its employees or collaborators. Pursuant to the provisions of the Decree, an entity can be held liable for an offence when it has not implemented and circulated a business or corporate culture based on legality and has not adopted a working organisational structure supported by an adequate control apparatus. In general, in the system outlined by Italian Legislative Decree 231/2001, an entity can be held liable if an offence is committed that is attributable to its personnel and there is proof that there has been a failure to take organisational measures aimed at preventing criminal offences.

As mentioned in the previous chapter, the attribution mechanism outlined in Articles 6 and 7 of Italian Legislative Decree 231/01 defines two different categories of persons found to have committed a predicate offence. The two categories are separated by the distinction between offences that express company policy, in that they are committed by senior persons, and offences that result from a lack of control by senior management and are committed by subordinates.

1.9.1. Senior management (Article 6)

Article 6, paragraph 1, Italian Legislative Decree 231/2001 states that:

'1. If the offence was committed by a person listed under Article 5, paragraph 1, letter a), the entity cannot be held liable if it proves that

- a) the senior management body has adopted and efficiently implemented, prior to commission of the crime, organisation and management models which are capable of preventing offences of the type committed;*
- b) the task of overseeing the functioning and the observance of models, and responsibility for updating models has been delegated to a body within the organisation that is vested with powers to act on its own initiative and to conduct audits;*
- c) the offence was committed by persons who fraudulently circumvented the organisation and management models;*
- d) the body referred to in point (b) had not failed to perform or had inadequately performed its supervisory role [...].'*

In outlining the criteria for holding an entity liable for offences committed in its interest by senior management, the provision uses the organic link theory, which, from a procedural point of view,

seems to make it clear that an entity deriving an "advantage" from an offence which was not committed in pursuit of the entity's interest, could not be penalised under the provisions of Italian Legislative Decree 231/2001. The exclusive nature of the interest held by the person who committed the offence would, in fact, make any advantage obtained as a result by the entity irrelevant for the purposes of applying the penalty. An entity is therefore liable: a) when those who have committed the offence have acted in favour of the entity itself, even if the entity has not gained any advantage from the criminal conduct; b) when it has in any case received an advantage from the commission of the offence, unless it can be proved that those who have acted were motivated by exclusive *personal* interest (or that of third parties).'

inverts the burden of proof whereby, if the offence is committed by senior management, the entity is presumed to be liable unless the entity proves that it has fulfilled the obligations set out in letters a) and b) and that circumstances have occurred as set out in letters c) and d) of Article 6 of the Decree. The provision in question is based on the presumption that management's actions coincide with the entity's business policy²⁰ which renders the entity liability, subject to it proving that it meets the requirements set out in detail in the provision.

In particular, the entity cannot be held liable if:

- a) prior to the offence being committed, the senior management body adopted and efficiently implemented appropriate organisational and management models aimed at preventing offences of the type committed; The adoption of an organisational model, i.e., a structured system of principles of conduct, operating procedures, audit and organisational controls and disciplinary penalties, is not just an entity's obligation, it is that entity's duty. This is a condition for an entity not being held liable if an offence is committed by its officers. The adoption of a model cannot, of course, be limited to a mere formal act; in order for it to limit liability²¹ it must be a document that actually helps prevent the occurrence of unlawful activity within the entity; the model must be appropriate to the entity's specific structure and constantly updated;
- b) the task of overseeing the functioning and the observance of models, and responsibility for updating models has been delegated to a Supervisory Board that is vested with powers to act on its own initiative and to conduct audits; The Supervisory Board must, through its departments, ensure that activities are monitored and verify that the rules set out in the organisational model are observed.
- c) it can prove that the perpetrator(s) of the offence fraudulently circumvented the organisational model. The wording of the rule implies that it is not sufficient for an entity not to be an accessory to the commission of the person's offence; it must also prove that its model hindered the commission of the offence to such a degree as to force the offender(s) to undertake complex and costly activities to circumvent it. Therefore, an entity cannot be held liable where it is proven that the offence was committed not as a result of

²⁰ The Explanatory Report to Italian Legislative Decree 231/2001 expresses itself in these terms: *'In order to hold an entity liability, it is not enough that the offence is objectively attributable to it (the conditions under which this occurs, as we have seen, are governed by Article 5); the offence must also be an expression of the entity's business policy or at least derive from organisational fault'. And again: 'we should start from the (empirical) presumption that, if an offence is committed by a member of senior management, the "subjective" requirement for holding the entity liable [i.e. the entity is deemed to be at "organisational fault"] is satisfied, since an entity's senior management expresses and represents the policy of the entity; where this is not the case, it will be for the entity to prove it should not be held liable, and it can only do so by proving the existence of a series of accessory requirements'.*

²¹ Please see case law precedents in which the ruling recognised that an appropriate organisational model could limit liability: in the judgment of the Preliminary Hearing of the Court of Milan of 17th November 2009 (Impregilo S.p.A. case) and judgment no. 1188/11 of the Preliminary Hearing of the Court of Cagliari of 4th July 2011 (Saras S.p.A. case). With particular reference to the latter of the two judgments noted above, the Judge considered that the interest of the entity (i.e., reducing safety costs) indicated in the indictment was not related to the offence and, therefore, did not allow the entity to be held liable. In this regard, please note the concluding passage of the decision on this point: *'For the sake of completeness - although this goes beyond the assessments imposed by the principle of correlation between the accusation and the fact - it must however be noted that the culpable conduct found to exist is not attributable to an economic choice made by the company, but rather to deficiencies in the setting of certain profiles of a safety management system that was on the whole adequate and certainly not set up with a view to making savings. Therefore, pursuant to Article 66, Italian Legislative Decree 231/2001, an entity cannot be held liable under the single formula set out by the legislator, namely that of the non-existence of the fact'.*

- the entity's organisational weakness or insufficient supervisory structure, but was committed in spite of its control apparatus;
- d) it can prove that it, and in particular its Supervisory Board, is not at fault, for example, it proved it adopted an organisational or supervisory measure that would have prevented the commission of the offence.

1.9.2. Subordinates

Article 7 of Italian Legislative Decree no. 231/2001 states that:

'1. In the case set out in Article 5, paragraph 1, letter b), an entity is liable if the commission of the offence was made possible by a breach of management or supervisory obligations.

2. In any case, an entity is deemed not to have breached its management or supervision obligations if the entity, prior to the offence being committed, adopted, and effectively implemented an appropriate Organisation, Management and Control model aimed at preventing offences of the type committed.

3. The model sets out appropriate measures, in relation to the nature and size of the organisation and the type of activity carried out, to ensure that the activity is performed in compliance with the law and to promptly detect and eliminate risks.

4. The effective implementation of the model requires: a) periodic audit and, if necessary, amendment of the model when significant violations of the provisions are discovered or when changes occur in the organisation or activity; b) an appropriate disciplinary system is put in place to impose penalties for non-compliance with the measures set out in the model.'

Pursuant to the first paragraph of Article 7 referred to above, an entity can be charged with an offence committed by a person subject to the control of others is based on a scheme of culpable liability, where the liability attributed to an entity concerns its failure to fulfil its management and supervisory obligations. More generally, the attribution of liability follows where an organisation is found to have failed to properly supervise, referring not to a specific person but to the entity as a whole.

The second paragraph of Article 7 of the Decree specifies that an entity cannot be deemed to have failed to fulfil its management or supervisory obligations where the entity, prior to the commission of the offence, has adopted and effectively implemented an appropriate organisational model aimed at preventing offences of the kind committed. The existence of this specific circumstance makes it possible to exclude any type of connection between the offence committed by the subordinate and any misconduct on the part of the entity.

The suitability of the model is assessed in accordance with the criteria contained in the third and fourth paragraphs of Article 7 of Italian Legislative Decree 231/2001, which provide general indications regarding the structure of any organisational model, without affecting the obvious need for models to reflect different organisational structures and, in particular, to reflect the different types of company and production business. In short, any assessment must verify that:

- the model contains appropriate measures to ensure that activities are carried out in compliance with the law and to promptly detect and highlight risks;
- a periodic audit has been carried out to ensure that the organisation model's provisions are met;
- any changes resulting from violations or changes in the entity's organisation or activity, have been adopted;
- an appropriate disciplinary system has been put in place to penalise non-compliance with the measures set out in the model.

The organisational model must include “Provisions for the protection of persons reporting offences or irregularities they have become aware of in the context of a public or private employment relationship” introduced by Italian Law no. 179/2017, which introduced specific provisions to regulate whistleblowing²² actions.

1.10. Adoption of the organisational model and exemption from administrative liability (Articles 6 and 7)

By analysing Articles 6 and 7 of Italian Legislative Decree no. 231/2001 it is possible to identify the fundamental content of the entire regulation of the administrative liability of entities, namely, exemptions from such liability and the related penalties connected to the adoption and effective implementation, prior to the offence, of an appropriate organisational model aimed at preventing offences of the kind committed.

As we have seen, Article 6 in respect of senior management and Article 7 in respect of subordinates define the obligations that an entity must fulfil in order to benefit from the exemption in question, it being understood that adopting and effectively implementing an organisational model is on a purely voluntary basis.

While the adoption of an organisational model is optional, it is also clear that the provisions of Italian Legislative Decree no. 231/2001 are obligatory for all recipient entities, which are therefore exposed to the system of penalties introduced by that legislation. Moreover, it should be noted that not having a suitable model may itself constitute a breach of the obligations of an entity's directors in relation to the suitability of company administrative, organisational, and accounting structures (Article 2381, paragraphs 3 and 5, Italian Civil Code) and of the general obligation of diligent administration (Article 2392, Italian Civil Code).

With regard to the contents of organisational models for the prevention of offences, Articles 6 and 7 of Italian Legislative Decree no. 231 provide an indication of certain general requirements. The characteristics and contents of organisational models have also been extensively outlined in the years after the Decree came into force, thanks to the guidelines of the main trade associations²³, which have in turn incorporated indications provided by the following case law:

²² In particular, Article 6, paragraph 2-bis of Italian Legislative Decree 231/2001 introduced by Italian Law no. 179/2017 states that: *‘The models referred to in letter a) of paragraph 1 require: a) one or more channels enabling the persons indicated in Article 5, paragraph 1, letters (a) and (b), to submit, in order to protect the integrity of the entity, detailed reports of unlawful conduct, deemed material pursuant to this Decree and based on precise and concordant facts, or of breaches of the entity's organisational and management model, of which they have become aware by reason of their duties; these channels guarantee that the identity of the reporting person remains confidential throughout the report management process; b) at least one alternative reporting channel capable of guaranteeing, by computerised means, that the reporting person's identity remains confidential; c) the prohibition of retaliatory or discriminatory acts, whether direct or indirect, against the reporting person for reasons directly or indirectly connected with the report; d) that the disciplinary system adopted pursuant to paragraph 2(e), contains penalties against those who breach the measures adopted to protect the reporting person, as well as against those who make malicious or grossly negligent reports that are unfounded’.*

²³ Article 6 of the Decree expressly states that organisational, management and control models may be adopted on the basis of codes of conduct drawn up by associations representing the entities. The main purpose of this regulatory provision is to encourage members of trade associations to align with the principles set out in the Decree and, likewise, to stimulate the development of structured codes that can serve as a reference point for entities wishing to draft an organisation and management model. In this context, in 2002, the Italian Banking Association (ABI) issued its ‘Guidelines for the adoption of organisational models on the administrative liability of banks’, with a subsequent update in 2004. These guidelines define the fundamental elements that, in the context of the peculiarities of credit institutions, help to define an organisational and management model that complies with the provisions of Italian Legislative Decree no. 231. The ABI's Guidelines set out and describe the fundamental components of an organisational model capable of

- i. risk analysis, including the identification of the areas and/or activities at risk of offences and the possible ways in which offences may be committed in those areas and activities (Article 6, paragraph 2, letter a), Confindustria Guidelines, p. 47 et seq.) This is known as a 231 Assessment; more specifically, the organisational model must be prepared using this basis:
 - a. an inventory of the company's areas of activity, aimed at identifying the areas that, due to the nature and characteristics of the activities actually carried out, would be affected by the potential commission of predicate offences (Confindustria Guidelines, p. 47 et seq.);
 - b. an analysis of potential risks aimed at identifying the possible ways in which the predicate offences could be committed in the various corporate areas identified. The analysis must lead to a representation of how offences may be committed with regard to the entity's operational context (internal and external), taking into account, among other things, the entity's past history and any offences committed by other entities operating in the same sector (Confindustria Guidelines, p. 49 et seq.);
- ii. a system of protocols and procedures aimed at regulating the entity's activities in the areas and/or activities at risk, including the methods for managing financial resources, so as to prevent the commission of offences (Article 6, paragraph 2, letters (b) and (c), Confindustria Guidelines, p. 50 et seq.) Protocols and procedures must include:
 - a. the adoption of ethical principles through a Code of Ethics and Conduct, i.e., the identification of the primary corporate values that the entity intends to comply with; this is the foundation of a preventive control system;
 - b. the regulation of the performance of sensitive activities with provision for appropriate control points, for separation of duties between those who perform crucial phases or activities of each process at risk (so that no one can carry out an entire process independently), and traceability of the activities performed, and controls carried out;
 - c. a sufficiently maintained, formalised and clear organisational system;
 - d. an appropriate allocation of authorisation and signature powers;
 - e. communication and training activities;
- iii. a Supervisory Board which is responsible for supervising the functioning and implementation of the model and ensuring that it is kept maintained, and is endowed with autonomous powers of initiative and control and meets the requirements of autonomy, independence, professionalism, and continuity of action (Article 6, paragraph 1, letter b, Confindustria Guidelines, p. 75 et seq);

preventing the offences referred to in Italian Legislative Decree 231/2001. These include: - identification of the activities within the scope of which the Offences may be committed; - provision of rules aimed at planning the formation and implementation of decisions in relation to the Offences to be prevented and identification of the methods for managing financial resources; - appointment of an internal audit body responsible for supervising the operation of and compliance with the company's organisational and management model adopted, and responsible for ensuring that it is updated; - definition of a disciplinary system to penalise non-compliance with the organisational model and the rules of conduct laid down; - publicising and circulating the organisational model adopted; - staff training on the administrative liability of entities and on the components of the model adopted. Another reference point, in the broadest sense, is the 'Guidelines for the construction of organisation, management and control models pursuant to Decree 231' issued by Confindustria in 2003 and subsequently updated. In this context, this document has been prepared taking into consideration the indications provided by the ABI and Confindustria Guidelines, insofar as they apply to corporate particularities and specific context, as well as the indications provided by Banca Ifis in its management and coordination role.

- iv. the provision of information obligations in relation to that body (Article 6, paragraph 2, letter d, Confindustria Guidelines, p. 75 et seq);
- v. an appropriate disciplinary system aimed at penalising violations of the model (Article 6, paragraph 2, letter e, and Article 7, paragraph 4, letter b, Confindustria Guidelines, p. 70 et seq);
- vi. the provision of one or more channels enabling senior management and subordinate persons to submit, for the protection of the entity's integrity, justified reports of unlawful conduct deemed material pursuant to the Decree or of violations of the entity's model, and which guarantee:
 - a. that the identity of the reporting person remains confidential throughout the report management process;
 - b. at least one alternative reporting channel that ensures, by computerised means, that the identity of the reporting person's identity remains confidential;
 - c. the prohibition of retaliatory or discriminatory acts, whether direct or indirect, against the reporting person for reasons directly or indirectly connected with the report;
 - d. that the disciplinary system contains penalties against those who breach the measures adopted to protect the reporting person, as well as against those who make malicious or grossly negligent reports that are unfounded.
- vii. the provision for continuously updating the model, on the basis of changes in the entity's activity/organisation, as well as on the basis of the discovery of any unlawful conduct and/or violations of the model (Article 7, paragraph 4, letter a, Confindustria Guidelines, p. 76 and 91, among others).

The requirements just described are necessary for a model to be considered suitable for preventing the predicate offences under Italian Legislative Decree 231/2001²⁴. Moreover, in order for an entity to be considered as not being liable for any offences committed by its officers, the model must not only comply with the above requirements but must also be effectively implemented and concretely structured in such a way that the offence cannot be committed other than by wilfully circumventing the measures laid down in the model or has been committed despite the Supervisory Board fully meeting its supervisory obligations.

Finally, it is worth noting that in practice, organisational models are generally divided into two main sections:

²⁴ It should also be noted that, pursuant to Article 30 of Italian Legislative Decree no. 81/2008 (the Italian Consolidated Health and Safety Law, or 'TUS'), an organisational model capable of exempting administrative liability pursuant to Italian Legislative Decree 231/2001 must be adopted and effectively implemented, ensuring a corporate system for the fulfilment of all related legal obligations:

- a) compliance with legal technical and structural standards regarding equipment, plant, workplaces, and chemical, physical, and biological agents;
- b) risk assessment activities and subsequent preparation of prevention and protection measures;
- c) organisational activities such as emergencies, first aid, management of tenders, periodic safety meetings, consulting with workers' health and safety representatives;
- d) health monitoring activities;
- e) worker information and training activities;
- f) supervisory activities in reference to compliance with safe work procedures and instructions by the workers;
- g) acquiring legally required documentation and certifications;
- h) periodic audits of the application and effectiveness of the adopted procedures.

- i. a General Section reflecting the requirements just mentioned and usually containing sections devoted to:
 - a. organisation, *governance* model, and control system;
 - b. the purpose and implementation of the model with related communication and training;
 - c. updating and continually improving the model;
 - d. the Supervisory Body;
 - e. the disciplinary system;
 - f. the system for receiving and managing reports.
- ii. a Special Section divided into corporate processes or predicate offences that:
 - a. identify sensitive activities, i.e., activities characterised by the inherent risk of predicate offences being committed;
 - b. establishes control standards, i.e., it sets out prevention principles and protocols and related controls for each sensitive activity.

1.11. The governance model of Banca Ifis S.p.A.

Banca Ifis S.p.A. (**'Banca Ifis'**, the **'Bank'** or the **'Company'**) is a joint-stock company whose shares are listed on the Italian Stock Exchange. The Company has chosen to adopt the ordinary corporate governance model, defined by Article 2325 et seq. of the Italian Civil Code, and structured on the traditional bodies whose functions are established by civil law and specified by the Articles of Association.

1.11.1. Shareholders Meeting

A Shareholders Meeting is a collegial decision-making body formed by the Bank's shareholders and/or their representatives. The way in which a Shareholders Meeting works, and the powers and tasks attributed to it are defined by Italian Law and the Bank's Articles of Association.

A Shareholders Meeting is held at least once a year, within 120 days of the end of the Company's financial year.

Limiting itself to the tasks that have the most immediate impact on the Company's governance, it should be noted that the Shareholders Meeting approves the financial statements; appoints, through the list voting mechanism, and removes the members of the Board of Directors and establishes their remuneration; appoints, through the list voting mechanism, the Statutory Auditors and the Chairman of the Board of Statutory Auditors and establishes their remuneration; resolves on transactions that entail amendments to the Articles of Association; and resolves on other matters reserved for it by the Articles of Association or by law.

1.11.2. Board of Directors

The Board of Directors (also the **'Board'**) is elected by the Bank's Shareholders Meeting and defines its strategic guidelines and continuously monitors their implementation, ensuring sound and prudent management.

The way in which the Board of Directors works, and the powers and tasks attributed to it are defined by Italian Law and the Bank's Articles of Association.

The Board of Directors defines the Bank's overall governance structure and approves its organisational structure. It verifies that they are properly implemented and initiates timely corrective measures in the event of any shortcomings or deficiencies.

The Board is vested with all powers of ordinary and extraordinary administration, excluding only those powers that the law strictly reserves for the Shareholders Meeting. In exercising its strategic

supervision role, and in addition to the powers that cannot be delegated pursuant to law or the Articles of Association, the Board of Directors performs the following functions: it defines and approves the Bank's *business* model, strategic guidelines, and recovery plan – also amending and updating the recovery plan at the request of the supervisory authority and the adoption of all measures necessary to achieve its purposes; it defines and approves the risk profiles; it defines and approves the guidelines used to design the internal audit system, the assessment process, and the criteria for identifying significant transactions to be submitted for prior scrutiny by Risk Management; it approves the establishment of the Internal Audit department and, at the proposal of the Chief Executive Officer, approves the establishment of the organisational units that perform the company's audit functions; it defines and approves the policies and processes for assessing company activities; it defines and approves the process for developing and validating internal risk measurement systems; it defines and approves the process for approving new products and services, starting new activities, and entering new markets; it defines and approves the process for managing employees; it defines and approves the Group Policy for the outsourcing of corporate functions; it defines and approves the Code of Ethics with which corporate bodies and employees are required to comply in order to mitigate operational and reputational risks; it defines and approves the internal systems for reporting violations; it defines and approves the structuring of delegated powers and decision-making powers in line with the strategic guidelines and risk positions established, and auditing their exercise; with regard to credit and counterparty risk, it defines and approves the general guidelines for the system used to manage risk mitigation techniques, which regulates the entire process of acquiring, evaluating, controlling, and creating the risk mitigation tools used; in the exercise of its strategic supervision function, it assumes general responsibility for the direction and control of the ICT system, with a view to optimising the use of technological resources in support of corporate strategies (*ICT Governance*). The Board of Directors is called upon to take strategic decisions on the proposal of the Chief Executive Officer in the area of IT risk and business continuity.

1.11.3. Board Committees

Three Board Committees, operating at Group level, are established within the Board of Directors:

1. Risk Management and Internal Control Committee

The Risk Management and Internal Control Committee supports the Board of Directors regarding risks and the internal audit system. In this context, it places particular emphasis on all necessary and additional activities that are required for the Board of Directors to determine risk management policies correctly and effectively.

2. Appointments Committee;

The Appointments Committee carries out the following support functions: it supports the Board of Directors and the Chief Executive Officer in the processes to appoint and co-opt directors in accordance with the provisions of Bank of Italy Circular 285/2013; it supports the management self-assessment process (Board of Directors and Chief Executive Officer); it verifies the conditions established pursuant to Article 26 of Italian Legislative Decree 385/1993 ('**TUB**') (requirements of professionalism, honourableness and independence as well as the criteria of competence and honesty of corporate officers) and the relative secondary application regulations; it defines succession plans for top executive positions;

3. Remuneration Committee.

The Remuneration Committee supports the Board of Directors in defining the Group's remuneration and incentive policies.

The composition, mandate, powers (advisory, investigative, propositional), available resources and internal committee regulations are clearly defined and set out in detail in the Board of Directors, Board Committee, and Supervisory Board Regulation. The establishment of committees does not limit the decision-making powers and responsibilities of the Board of Directors. Each Committee is usually composed of 3–5 members, each of whom will be non-executive and the majority of whom will be independent.

1.11.4. Chief Executive Officer

The Board of Directors appoints a Chief Executive Officer from among its members and determines that person's management powers. The Chief Executive Officer implements the resolutions of the Board of Directors, also with the help of the Joint General Managers. The Chief Executive Officer, as the person with a management function, has an understanding of all corporate risks, including the possible risks from the malfunctioning of internal measurement systems ('Model Risk').

The Chief Executive Officer: (i) formulates proposals on strategic guidelines and objectives and submits them to the Board of Directors; (ii) implements strategic guidelines, the RAF and risk governance policies; (iii) takes the necessary actions to ensure that the organisational and internal audit systems meet the applicable regulatory standards and requirements, and continually monitors compliance.

In particular, the Chief Executive Officer:

1. defines and is responsible for implementing the risk management process;
2. defines and is responsible for implementing the process (heads of unit, procedures, terms, and conditions) to approve investments in new products, the distribution of new products or services and the start of new activities or entry into new markets.
3. defines and is responsible for implementing the company policy for the outsourcing of corporate functions;
4. defines and oversees the implementation of the processes and methodologies used to value the company's assets, and in this regard, is responsible for defining and applying the methodologies used to value the company's assets;
5. defines internal information flows aimed at ensuring that management and organisational units tasked with audit functions are kept fully informed and are able to govern risk factors and check conformance with the RAF;
6. within the framework of the RAF, if a tolerance threshold has been defined, the Chief Executive Officer authorises any request to exceed the risk appetite within the limit represented by the tolerance threshold and promptly informs the Board of Directors, identifying the management actions necessary to bring the assumed risk back within the predetermined target;
7. implements any initiatives and actions that are necessary to continuously guarantee the completeness, suitability, functionality, and reliability of the company internal audit system and makes the Board of Directors aware of the results of checks carried out.
8. prepares and implements the necessary corrective or adjustment actions when failures or anomalies emerge, or following the introduction of new products, activities, services, or key processes;
9. defines the process for managing holdings in non-financial companies and indirect equity investments;

With regard to the ICAAP/ILAAP process, the Chief Executive Officer implements this process, ensuring that it is in line with strategic guidelines and the RAF; With reference to credit and counterparty risks, in line with strategic guidelines, the Chief Executive Officer approves specific guidelines aimed at ensuring the effectiveness of the system for managing risk mitigation techniques and ensuring compliance with the general and specific requirements for such techniques. The Chief Executive Officer is responsible for ensuring the completeness, adequacy, functionality, and reliability of the ICT system with support from and following proposal by the Joint General Manager/Chief Operating Officer. The Chief Executive Officer ensures prompt and accurate information is provided to the Board of Directors in relation to the Bank's operating results, financial position and cash flow situation and other matters of strategic importance. The Chief Executive Officer implements the strategic guidelines and regulatory policies defined by the Board of Directors.

1.11.5. Board of Statutory Auditors

The Board of Statutory Auditors is elected by the Bank's Shareholders' Meeting. The way in which the Board of Statutory Auditors works, and the powers and tasks attributed to it are defined by Italian Law and the Bank's Articles of Association.

The Board of Statutory Auditors oversees the Bank's compliance with laws, regulations, and the Articles of Association, oversees whether the Bank is being managed and administered correctly, oversees the adequacy of the Bank's accounting and organisational structures, and the functionality of the overall internal audit system. This body is required to verify that the departments involved in the internal audit system are suitable for the role, able to perform their tasks correctly, and can work in a coordinated manner, supporting the corrective actions taken to rectify any failures and irregularities identified. The Board of Statutory Auditors is specifically consulted on decisions concerning the appointment and dismissal of the heads of company audit departments and on the definition of the essential elements of the overall architecture of the audit system (attribution of powers, responsibilities, identification of resources, information flows, management of conflicts of interest).

The Board of Statutory Auditors verifies and investigates the causes and remedies of management irregularities, performance anomalies, and deficiencies in organisational and accounting structures, paying particular attention to compliance with conflict-of-interest regulations.

The audits that the Board of Statutory Auditors performs must cover the entire company organisation, including audits of systems and procedures, of the various branches of activity, and of operations.

With reference to accounts audits carried out by an external auditor, the Board of Statutory Auditors retains tasks related to the assessment of the adequacy and functionality of the accounting system, including the related ICT systems, in order to ensure a correct representation of company events.

The Board of Statutory Auditors will also:

- notify the Board of Directors and the Chief Executive Officer of any failures and irregularities found, without prejudice to the reporting obligations to the Bank of Italy, and requests the adoption of appropriate corrective measures and verifies their effectiveness over time;
- notify CONSOB without delay of any irregularities found in its supervisory activities and submits the relevant minutes of meetings and investigations carried out and any other useful documentation;

- verifies its own suitability, in terms of powers, functioning and composition, taking into account the Bank's size, complexity and activities;
- arranges appropriate forms of continual coordination with the appointed external auditor;
- be responsible for the completeness, suitability, functionality, and reliability of the Internal Audit System and the RAF;
- oversee the completeness, suitability, functionality, and reliability of the internal rating systems used for risk management purposes;
- oversees the suitability and compliance of the liquidity risk management process with regulatory requirements.

In the performance of its duties, the Board of Statutory Auditors is provided with adequate information flows from the other management bodies and internal audit departments; the reports from Internal Audit, Risk Management, Compliance and Anti-Money Laundering departments must also be directly transmitted by the respective heads to the Board of Statutory Auditors.

1.11.6. Supervisory Board

The Supervisory Board set up pursuant to Legislative Decree 231/2001 on the administrative liability of Entities, operates as an autonomous body responsible for overseeing the effectiveness, observance, and updating of the 'organisation, management and control' models aimed at preventing the offences covered by Italian Legislative Decree 231/2001. For a detailed analysis of this body, please refer to the relevant section of this General Section.

1.11.7. General Management

The General Management body consists of either a General Manager and, if appointed, one or more Deputy General Managers, or one or more Joint General Managers. They manage, within the framework of the provisions of the main internal regulations approved by the Board of Directors, current affairs by directing the staff designated for this purpose.

The Joint General Managers assist the Chief Executive Officer to implement the company's strategic guidelines and management activities and participates, upon invitation and in an advisory capacity, in meetings of the Board of Directors.

There are two Joint General Managers with powers and responsibilities in the following areas:

- commercial/business (Joint General Manager/Chief Commercial Officer, '**CCO**');
- organisation (Joint General Manager/Chief Operating Officer, '**COO**').

The General Management body also includes the Management Committees, and in particular the following Committees:

- the Finance Committee, which expresses its opinion on (i) asset & liability management and liquidity issues and (ii) the management of the Banca Ifis Portfolio, which is overseen by the following two internal committees, the ALM and Liquidity Technical Committee and the Bank Portfolio Technical Committee;
- the Management Committee, whose objective is to ensure constant alignment and guidance on key initiatives with a high impact on the structure;
- the Brand Committee, which promotes the internal and external dissemination of the image of the Bank and the Group as a whole, takes responsible for its brand identity, and defines and approves initiatives with a high impact on the Bank's image;
- the Products Committee, whose objective is to translate the business needs of a new product, service, or market into an ongoing process of development and management, by assessing, among other things, its performance and level of risk;

- the Investment in Illiquid Financial Assets Committee, which expresses its opinion and coordinates the analysis of initiatives and portfolio positions with respect to the Bank's investments in illiquid financial assets that are attributable, regardless of whether they are accounted for at fair value or not, to (i) products whose market value is determined on the basis of inputs that are not observable in active or inactive markets or, if observable in active or inactive markets, are unrated; and (ii) other exposures to SSPEs or companies instrumental in the performance of securitisation transactions that convey such products, including, but not limited to: advance payments, loans, liquidity lines, revolving lines, guaranteed credit;
- the Credits Committee, which, within the scope of the autonomy conferred by the system of credit risk assumption and the system of credit risk management responsibilities, has the objective of assessing in a collegial manner the credit transactions originated by the Joint General Manager/Chief Commercial Officer and the Credit Department;
- the Operational Quality Committee, whose purpose is to track and share operational improvements (whether related to standards/processes, technological or operational) that will continually refine the Bank's focus on internal/external regulatory frameworks and ICT security;
- the Sustainability Committee, which aims to identify initiatives and projects that deal with environmental, social and governance (ESG) issues; here, governance refers to a system that enables the Bank to operate with integrity and in full compliance with the laws and regulations in force as well as in accordance with the principles set out, inter alia, in the Bank's Code of Ethics.

1.11.8. Audit Structure and Organisational Units

Banca Ifis's audit system is structured to verify the possible materialisation of all risks inherent in the company's overall business and corporate operations, including the risks associated with the commission of predicate offences *pursuant to* Legislative Decree no. 231/2001, so as to ensure timely reporting of particular or general problems.

Banca Ifis's audit controls operate through the usual triple layered organisation in which it exists:

- a 1st level of control, which defines and manages the 'line' controls inherent in operational processes and the related risks. It is implemented by the department's internal resources, either in self-monitoring by the operator or by the supervisor/manager, but may also involve, for specialised aspects, the use of other internal or external resources;
- a 2nd level of control, carried out by the company's technical departments that are competent in the field and are independent of the 1st level control department and of the work area undergoing audit. Such monitoring safeguards the process of managing and controlling risks related to the Bank's general operations, ensuring that they are in line with business objectives;
- a 3rd level of control, performed by the Internal Audit department, which provides 'assurance', i.e., independent assessments of the structure and functioning of the audit system;

Given this organisational scheme, Banca Ifis has set up Organisational Units specifically dedicated to 2nd and 3rd level control activities, whose roles and responsibilities are described in the relevant organisational regulations approved by the Board of Directors.

The following is a description of their purpose in carrying out the controls under their remit.

1.11.9. Internal Audit

The Internal Audit department's activity is aimed, on the one hand, at checking, as part of the third level of controls, including with on-site audits, the correct performance of operations and the evolution of risks and, on the other hand, at evaluating the completeness, suitability, functionality and reliability of the organisational structure and of the other components of the internal audit system, bringing any possible improvements to the attention of management, with particular regard to the Risk Appetite Framework (RAF), the risk management process, and the tools used to measure and control risk. Based on the results of its audits, Internal Audit makes recommendations to management.

1.11.10. Risk Management

The Chief Risk Officer (CRO) is the head of the 'Risk Management' organisational unit. Risk Management is involved in defining the RAF, the risk governance policies and the various phases that make up the risk management process, as well as in setting operational limits for the assumption of the various types of risk. In this regard, it is responsible for proposing the quantitative and qualitative parameters that are necessary for defining the RAF, which also refer to stress scenarios, and adjusting those parameters in the event of changes in the bank's internal and external operational situation. In addition, it verifies the suitability of the RAF as well as the process to continually manage risk and operating limits.

1.11.11. Compliance

The Compliance department uses a risk-based approach to manage the risk of non-compliance with regard to all business activities. This occurs by assessing the suitability of internal procedures in terms of preventing the violation of legislation and external regulatory provisions and internal regulatory provisions (for example, codes of conduct and codes of ethics) that apply to Group companies (including Banca Ifis).

In addition, the Compliance department provides assistance to the Supervisory Boards of Group Companies with regard to the planning and performance of audit activities requested by them and ensures the monitoring of changes in relevant legislative and regulatory provision changes.

1.11.12. Anti-Money Laundering

The Anti-Money Laundering department continually verifies that company procedures are in line with the objectives of preventing and combatting breaches of legislation and external regulatory provisions and internal regulatory provisions regarding money laundering and the financing of terrorism.

1.11.13. Financial Reporting Officer

Pursuant to Italian Law 262/05 "Provisions for the protection of savings and the regulation of financial markets", Banca Ifis appoints a Financial Reporting Officer, in accordance with Article 154-bis of the Italian Consolidated Finance Law. The Financial Reporting Officer ensures the reliability of the Bank's and the Group's statements of financial, economic, and capital situation by contributing to the overall assessment of the suitability of the internal audit system on financial reporting.

1.12. The company organisational structure

For the purposes of understanding the Model, the following is an overview of the corporate and organisational structure of Banca Ifis, on which the governance and control system described above is based.

1.12.1. Banca Ifis's business activities

The summary identification of the business activities carried out by Banca Ifis as a business that is active on the market constitutes a logical and operational prerequisite with respect to the identification of the areas at risk of the commission of predicate offences pursuant to Italian Legislative Decree 231/2001 and defines the corporate context on which the Company's governance system operates.

All activities that characterise Banca Ifis's varied businesses are organised within the department headed by the Joint General Manager/Chief Commercial Officer.

This department, within the framework of the strategies defined by the Board of Directors, ensures the development of the various businesses in which the Bank operates in terms of:

- achieving commercial objectives, developing evaluations and forecasts regarding economic and financial performance and on possible development opportunities for the relevant businesses;
- defining the product catalogue and the most effective sales channels, identifying distribution policies and pricing;
- developing commercial synergies with other Group companies;
- monitoring the profitability of the actions undertaken.

The department is composed of the following Areas:

- *Tax Credits* is dedicated to acquiring tax credits, mostly from companies in administration or in liquidation;
- *Corporate Finance* is dedicated to offering structured finance transactions, special situations, or investments in performing non-financial companies or in shares of intermediary organisations. In these regards, it is particularly involved in the performance of origination, due diligence and management activities related to investments in the holdings of performing non-financial companies and in shares in intermediary organisations. Within the scope of its activities, it ensures that there are no situations of simultaneous investment resulting from separate investment services or activities or ancillary services, when such investments could be detrimental to the proper management of conflicts of interest;
- *Leasing and Renting* is dedicated to the provision and management of leasing and renting products. In this context, it develops and manages commercial relations and business opportunities, assessing the profitability of transactions and in compliance with the strategic guidelines and objectives defined by the Board of Directors. It also carries out debt collection activities related to retail portfolios of personal loans and mortgages and, in general, to the management of acquired portfolios (performing or impaired with performing loans on the books) in the context of broader distressed loan acquisition projects;
- *Pharmacies*, dedicated to providing financing services to domestic pharmacies, both developed in-house and referred by the commercial network of the subsidiary company, Credifarma. It develops and manages commercial relations and business opportunities, assessing the profitability of transactions and in compliance with the strategic guidelines and objectives defined by the Board of Directors;

- *Insurance Development*, which is responsible, with reference to the insurance products offered by the Bank to its customers, for (i) defining the business plan of the Bank's new insurance businesses and continually monitoring their performance, (ii) identifying new products in line with the chosen positioning, (iii) managing relations with insurance companies and external institutions in the relevant sector;
- *Marketing & Business Strategy* provides support to the Areas reporting to the Bank's Joint General Manager/Chief Commercial Officer, which deals with the activities of planning and monitoring commercial production, also by means of dedicated tools and reports, in order to facilitate the action of the commercial networks by identifying the levers to be activated to identify the best opportunities for growth in the market. It also implements specific sales campaigns, identifying the target audience, contact channels and monitoring tools;
- *Commercial Network Italy*, dedicated to promoting financing services to domestic and foreign companies and to ensuring correct relationships are maintained with counterparties developed directly or indirectly, as well as debtors (domestic or foreign) acquired as part of the transactions performed. It develops and manages commercial relations and business opportunities, in accordance with the strategic guidelines and objectives defined by the Board of Directors;
- *Transaction Evaluation*, with regard to the first granting of credit and to renewal-review activities, assesses the creditworthiness of counterparties and the risk inherent in transactions and approves credit facilities in accordance with the powers assigned to it by the Board of Directors and formalised in the Group System of Responsibilities for the Assumption of Credit Risk;
- *Pharma*, dedicated to the pharmaceutical market, which operates by providing specialised support to sales networks (e.g., Commercial Network Italy), autonomously developing business relationships with pharmaceutical companies and/or operators in the sector. Pharma can directly develop business relationships with pharmaceutical companies and/or sector operators.

1.13. Purpose of Banca Ifis adopting an Organisational Model pursuant to Italian Legislative Decree no. 231/2001.

As already noted, the provisions of Italian Legislative Decree no. 231/2001 do not state that it is obligatory to adopt an Organisational Model (this is merely an option for an entity, for the purposes of a possible exemption from the relevant liability). Banca Ifis, in line with its own corporate policies and with the values and objectives of the Group it heads, has since 2004 deemed it appropriate to adopt a Model on the assumption that it acts as a valid tool for making its recipients aware of the need to adopt correct and transparent behaviour and as an effective safeguard for the prevention of unlawful conduct.

By adopting a Model, the Bank intends to pursue the following aims:

- to contribute to the creation and dissemination of a culture of lawfulness within the company, to prevent the commission of offences connected with the company's activities, by implementing and continually improving and updating a control and supervision mechanism structured into standards of conduct and organisational and control measures that are binding upon all recipients of the Model, and to oversee actual compliance with the Model by Banca Ifis's employees and collaborators, a task entrusted to the Supervisory Body in cooperation with its audit departments;
- to make the recipients of the Model aware that any violation of it is in direct conflict with the moral values and ethical standards that inform the Bank's actions. Any such conduct,

even if instigated with the intention of securing advantages for the Company and the Group, will not in any way be tolerated and will be penalised in accordance with the corporate disciplinary provisions referred to in the Model itself;

- to make aware those who work in the interests of the Bank, that the commission of an offence in the context of the Bank's operations will lead to criminal penalties being applied against the offender, but may also lead to the imposition of financial and prohibitory penalties described in this document against the Bank, with serious reputational and operational consequences as well as financial ones;
- to strengthen the internal audit structure, to involve all the Bank's staff in the implementation and application of corporate regulations on the prevention of criminal conduct, and to create the operational, and cultural, conditions to ensure that any violation – even if only suspected – of the Model is promptly reported to the Supervisory Board.

1.13.1. The Model's intended audience

The rules contained in this Model are addressed to:

- persons in positions of representation, administration, or management of the Company;
- persons exercising management and control over the Company;
- all Company employees subject to direction or supervision by the persons referred to above;
- limited to what is specifically indicated in the relevant contractual agreements, to self-employed workers, consultants, professionals, (commercial/financial) partners, suppliers, attorneys, and, in general, to third parties operating on behalf of or in the interests of the Company.

The Model and its contents are communicated to the persons concerned in such a way as to ensure that they are fully acquainted with it, as indicated in this General Section; therefore, the Recipients of the Model are required to comply punctually with all its provisions, including to fulfil the requirements of honesty and diligence deriving from the legal relationship they have established with the Company.

Members of the corporate bodies and employees will also receive specific information, communication, and training activities on the contents of the Model; other Recipients are required to read it and, in any case, to undertake to comply with its provisions.

1.13.2. Methodology used to define and implement the Banca Ifis Model

As already stated, Article 6, paragraph 2, letter a) of Italian Legislative Decree no. 231/2001 indicates that the model must identify the processes and activities in which context offences could be committed that are relevant in terms of attributing administrative liability to an Entity. In other words, these are the company activities and processes that are commonly defined as 'sensitive' ('risk areas'). This decree provides the fundamental criterion, as well as the point of attack for the proper preparation of the Bank's Model.

In fact, the preparation of this Model was preceded by a series of preparatory activities, divided into phases, aimed at building a risk prevention and management system in line with and inspired not only by the rules contained in Italian Legislative Decree No. 231/2001, but also by the contents and suggestions set out in the Guidelines and by existing best practice.

Below is a brief description of the phases in which the work of identifying the areas at risk was divided, following which the update to this Model was prepared:

1. the activities at potential risk of commission of relevant offences pursuant to Italian Legislative Decree no. 23/2001 (Sensitive Activities) were mapped and, for each activity, the management/instrumental processes were identified which, in principle, could provide the conditions and/or means for the commission of these offences;
2. for each management/instrumental process referred to in the previous point, the main reference corporate procedures/documents used to safeguard them, were identified; further behavioural and organisational safeguards for each of the families of offences considered relevant for the Bank were also identified.

This Model was drawn up on the basis of the activities described above, and it represents the set of rules and procedures with which the Bank intends to counter the risk of the offences set out in Italian Legislative Decree No. 231/2001 being committed.

1.14. Supervisory Board

As mentioned earlier, Italian Legislative Decree no. 231/2001 states that an Entity may not be held liable for the commission of the predicate offences if, among other things, the task of supervising the operation of and compliance with the Model and ensuring that it is updated has been entrusted 'to a body within an Entity that is given autonomous powers of initiative and control' (see Article 6, paragraph 1, letter b) of Italian Legislative Decree no. 231/2001), i.e. the Supervisory Board, and 'there has been no omission or insufficient supervision by that body' (see Article 6, paragraph 1, letter d) of Italian Legislative Decree no. 231/2001).

The requirements for organisational models set out in Italian Legislative Decree no. 231/2001 also include the provision of information obligations to the Supervisory Board (see Article 6, paragraph 2, letter d) of Italian Legislative Decree no. 231/2001).

Further provisions concerning the Supervisory Board are contained in paragraphs 4 and 4-bis of Article 6, pursuant to which, in small entities, the tasks of the Supervisory Board may be performed directly by the management body or, in corporations, by a board of statutory auditors, a supervisory board or a management control committee²⁵.

The provisions contained in Italian Legislative Decree No. 231/2001 concerning the Supervisory Board are therefore rather concise, despite the central role that the law unquestionably assigns to this body within the framework of the regulations on the liability of entities²⁶.

Since Italian Legislative Decree no. 231/2001 entered into force, case law and, in parallel, the indications coming from trade associations (in particular, from Confindustria through its guidelines), have in any case made it possible to outline the principles that must characterise the

²⁵ The Confindustria Guidelines have a positive opinion on the possibility that the role of Supervisory Board could also be attributed to the Risk Management and Internal Control Committee and the Internal Audit department. (See Confindustria Guidelines pp. 87–89)

²⁶ The Explanatory Report to Italian Legislative Decree 231/2001 on this point, states: 'An entity (...) shall also oversee the effective operation of models, and thus compliance with them: to this end, in order to ensure the maximum effectiveness of the system, it is provided that that entity shall avail itself of a structure to be set up internally (in order to avoid easy manoeuvres aimed at pre-establishing a licence of legitimacy for the work of the entity through recourse to compliant bodies, and above all to establish a real fault of an entity), endowed with autonomous powers and specifically assigned to these tasks (...) of particular importance is the provision of a duty to provide information to the aforementioned internal audit body, in order to guarantee its own operational capacity (...)'.

operation and position of a Supervisory Board in the context of a corporate business, as well as the requirements of its members²⁷, the main indications relate to

- autonomy and independence, in virtue of which, it is necessary:
 - to prevent the Supervisory Board as a whole from being assigned operational tasks²⁸ in order to avoid the parent and controlled entity coinciding²⁹;
 - to eliminate economic or personal interference and influence from senior management;
 - to set out in the Organisational Model effective reasons that would lead to existing and prospective members of the Supervisory Board being deemed ineligible and disqualified from the role; these reasons will guarantee integrity, absence of conflicts of interest and of familial relations with management and with senior management;
- professionalism, in particular:
 - it is necessary to appoint qualified inspectors and consultants, capable of carrying out statistical sampling³⁰, analysis, risk assessment and containment, questionnaire design and evaluation;
 - at least one of the members of the Supervisory Board should ideally have legal expertise;
- continuity of action, which requires:
 - a structure dedicated to overseeing the Organisational Model;
 - careful documentation of activities carried out. Aspects relating to the continuity of the Supervisory Board's actions, for example, the scheduling of activities, the minuting of

²⁷ In order to ensure that the requirements described are effectively fulfilled, both for Supervisory Boards composed of one or more internal members of staff and for Boards composed of external figures, it is appropriate for the members to possess the formal subjective requirements that further guarantee the autonomy and independence required by the task, such as integrity, absence of conflicts of interest and familial relations with senior management. These requirements should be specified in the organisational model. The requirements of autonomy, integrity and independence may also be defined by reference to what is provided for in other areas of company law. This applies, in particular, when an entity opts to establish a Supervisory Board with multiple members and all the different professional skills that contribute to the control of corporate management in the traditional corporate governance model (e.g., a member of the Board of Statutory Auditors or the head of internal audit) are concentrated in it. In these cases, the personal and professional characteristics required by law for statutory auditors and the head of internal audit (see Confindustria Guidelines p. 78) would be sufficient proof that the members of a Supervisory Board meet the necessary professional requirements, even in the absence of further indications.

The United Sections of the Supreme Court of Cassation in Judgment, 24.04.2014, no. 38343, Thyssenkrupp, cited above, clearly defined their position with regard to the possibility or, even, the appropriateness of a person operating in an area at risk of offence participating as a member of the Supervisory Board. The judgment rejected the argument that the presence within the Supervisory Board of persons directly involved in production processes (at risk of offences) improved the efficiency and functionality of the body by virtue of the specific technical expertise provided. Specifically, the composition of the Supervisory Board was identified as being incorrect since it included the head of the safety area of the steel company at which a well-known and dramatic workplace accident had occurred.

²⁹ With reference to the autonomy requirement set out in Article 6, paragraph 1, letter b) of Italian Legislative Decree 231/01, the Supreme Court of Cassation affirmed that it is not appropriate for the Supervisory Board to report directly to the President of the Board of Directors, because such an organisational framework would conflict with the principle that the controller cannot be subordinate to the controlled. (Italian Supreme Court of Cassation, Criminal Section V, 18/12/2013, no. 4677).

³⁰ The Confindustria Guidelines refer to techniques of:

- statistical sampling;
- techniques for analysing and assessing risks and developing measures to contain them (authorisation procedures; mechanisms for ensuring tasks do not clash);
- producing flowcharts of procedures and processes used to identify weak points;
- interview and questionnaire design techniques;
- elements of psychology;
- methods for detecting fraud.

meetings and the regulation of information flows from company departments, may be entrusted to the Board itself; therefore, the Supervisory Board must regulate its internal functioning.

In accordance with the provisions of Italian Legislative Decree no. 231/2001, by resolution of the Board of Directors dated 26h October 2004, Banca Ifis established a Supervisory Board, whose characteristics and requirements were defined in the Supervisory Board Regulation, which includes the indications of case law and trade associations referred to above.

The Supervisory Board has also set up a dedicated email address, in order to receive the relevant communications and/or reports. The email address is:

- organismo.vigilanza@bancaifis.it.

1.14.1. Meetings

The Supervisory Board meets at least every six months³¹, it also meets when requested by its President, and when requested by the majority of its members any time they believe it appropriate to act on sensitive processes or abnormal situations.

³¹ The President convenes and chairs the meetings of the Supervisory Board, prepares its work, directs, coordinates, and moderates the discussion. On behalf of the Supervisory Board, the President signs the reports and opinions to be submitted to the Board of Directors and/or other bodies or departments of the Bank. If the President is absent, unavailable, or impeded, the functions of the role are performed by the most senior member of the Supervisory Board. For the purposes of this Regulation, the President shall be deemed to be unavailable if he or she fails to acknowledge requests to convene a meeting sent to him by email with a specific subject by the other members or by the Bank's internal departments by the end of the following working day or, if urgent, within the following 18 hours.

The Supervisory Board is convened by the President or, in the event of his or her absence, impediment or delay in providing for it, by the most senior member of the Supervisory Board for the performance of its functions and duties with the frequency appropriate to the proper performance of such functions and duties. The Supervisory Board meets at least every six months, it also meets when requested by its President, and when requested by the majority of its members any time they believe it appropriate to act on sensitive processes or abnormal situations. Supervisory Board meetings are convened with at least three days' notice, by e-mail, registered letter, also by hand, or any other suitable means, indicating the place, day, time, and items on the agenda. If urgent, a Supervisory Board meeting may be convened with one day's notice prior to the scheduled date of the meeting. Any documents relating to the items on the agenda shall normally be made available at the same time as the meeting is convened and in any case with adequate advance notice. At the invitation of the President of the Supervisory Board, the President of the Board of Directors, the Vice President, the Chief Executive Officer, the General Manager of the Bank (if appointed) and the Joint General Managers may also attend the meetings. The President of the Supervisory Board may also invite the director in charge of the risk management and internal audit system and the other members of the Board of Directors, the statutory auditor or the representatives of the external auditor and the members of the management and control bodies of the Group companies to the meetings, with reference to all or some of the items on the agenda, except when issues concerning them are discussed. Lastly, the Supervisory Board may avail itself of and/or request the presence of independent consultants and any corporate officer or employee of the Bank or other Group company competent in the matter.

At least three members of the Supervisory Board are required to be present for any meeting to be valid. Supervisory Board resolutions are adopted on an absolute majority of those present. If the Supervisory Board is composed of an even number of members, and in the event of a tie, the person presiding over the meeting will have the casting vote. Votes may not be cast by representation and each member is entitled to one vote.

Meetings of the Supervisory Board may also be validly held through the use of appropriate audio, video or teleconference systems, provided that all those entitled to participate may do so, be identified, and are allowed to follow the meeting and intervene in real time in the discussion of the topics; all participants must also be able to send, receive, and view documents, with the ability to examine them and make decisions based on them in real time. The Supervisory Board may meet anywhere, provided that it is in Italy.

The Supervisory Board's administrative services are provided by the Legal and Corporate Affairs Department (the 'Secretary'). When requested by the President, the Secretary will prepare the agenda, send invitations to meetings, and prepare minutes of meetings.

1.14.2. Composition and requirements of the members of the Banca Ifis Supervisory Board

The members of Banca Ifis's Supervisory Board are qualified persons who are experts in the legal or accounting or tax fields, have an appropriate level of professional experience in the above subjects, and meet the requirements of independence and autonomy.

The members of the Supervisory Board are not subject, in that capacity and in the performance of their duties, to the hierarchical and disciplinary power of any of the Bank's corporate bodies or departments.

The Supervisory Board is composed of one Statutory Auditor, chosen by the Board of Statutory Auditors, the Heads of the Internal Audit and Compliance departments, as well as two independent directors, chosen by the Board, one of whom is to act as President (the '**President**').

Certain persons cannot be elected as a member of the Supervisory Board, these include: persons who have been sentenced for offences set out in Italian Legislative Decree 231/2001 or who have been prohibited, even temporarily, from public office; persons who administer businesses or organisation which, even indirectly, hinder personal development or are responsible, even partially, for violating fundamental human rights, and persons who are subject to the prohibitive conditions set out by the Banca's Code of Ethics.

Please note that the Code of Ethics constitutes an annex to this Model and is published on the corporate intranet as well as on the Banca Ifis Group website.

1.14.3. Duties and powers of the Banca Ifis Supervisory Board

The Supervisory Board is required to carry out the functions of an internal body that is given autonomous powers of initiative and control as set out by Italian Legislative Decree 231/2001.

In performing its tasks as set out by Italian Legislative Decree 231/2001, the Supervisory Board is required to carry out the following activities:

- to adequately identify and monitor the risks referred to in Italian Legislative Decree 231/2001 that are assumed or are assumable in relation to current business processes, ensuring that the activities to identify and map the risk areas and 'sensitive processes' are continually updated;
- to keep the Organisational Model updated in line with legislative changes, and with changes in the internal organisation and business activities;
- to check the suitability of the Organisational Model, that is, to check its effectiveness in preventing illegal behaviour;
- to help prepare and supplement internal behavioural codes;
- to use the Internal Audit department and, in general, all internal business departments to acquire relevant information in accordance with legislation;
- to set up initiatives aimed at spreading knowledge about the Organisational Model throughout the Company's bodies and to its employees, providing necessary instructions and guidance, and developing specific training courses;
- to carry out periodic checks aimed at specific transactions carried out as part of 'sensitive processes';

Minutes are signed by those members who participated in the meetings and by the Secretary tasked with taking minutes. They are stored by Legal and Corporate Affairs. (See Banca Ifis's Supervisory Board Regulations, point 5.2 – Meetings and Resolutions).

- to conduct extraordinary checks and/or investigations when parts of the Organisational Model are shown not to be working properly or when an offence has been committed which is subject to prevention activities;
- to oversee compliance with and application of the Organisational Model and, through the appropriate business departments, implement penalties pursuant to law and employment contracts;
- to oversee compliance with legislation on preventing the financial system being used to launder the proceeds of criminal activity and to finance terrorism.

The Supervisory Board has access to all activities performed by the Company and all related documentation. Where key activities or potentially key activities are outsourced to third parties, the Board must also be able to access the activities carried out by those entities.

In relation to the tasks it is called upon to perform under Italian Legislative Decree no. 231/2001, the Supervisory Board will:

- provide reports of its activities to the Board of Directors – whose meetings are attended by the Board of Statutory Auditors – at its earliest available meeting;
- have an ongoing relationship with the President of the Board of Directors, the Chief Executive Officer, and the Board of Statutory Auditors.

The Supervisory Board, except for matters dealt with by the General Management department's individual sub-departments, provides consultancy and makes proposals so that the Company can develop its ethical criteria. In particular, it is responsible for:

- defining initiatives deemed suitable for increasing awareness of the Code of Ethics and clarifying its meaning and application;
- co-ordinating the development of rules and procedures which implement the guidance contained in the Code of Ethics;
- initiating periodic reviews of the Code of Ethics and its implementation mechanisms;
- overseeing compliance with and application of the Code of Ethics and, through the appropriate company departments, implementing penalties pursuant to law and employment contracts;
- reporting to the Board of Directors on the activities it carries out, and on the problems connected with the implementation of the Code of Ethics.

To further strengthen the Supervisory Board's autonomy and independence, it is provided with adequate financial resources, which are decided in advance by the Board of Directors. The Supervisory Board has full and autonomous access to these resources at all times.

1.14.4. Confidentiality obligations

Members of the Supervisory Board must:

- ensure that information acquired in the performance of their duties and the activities carried out within the scope of their mandate are kept confidential, without prejudice to any information flows provided for by the Organisational Model and the lawful orders of the Courts;
- when exercising the powers conferred on them and the functions assigned to them as members of the Board, refrain from seeking and/or using confidential information for purposes other than the exercise of their duties and in any case in a manner not in accordance with those powers and functions.

These tasks are extended to the Secretary and any collaborators that the Board may use within the scope of its functions.

1.14.5. Reporting and information flows

The President of the Supervisory Board, or other member designated by the President on a case-by-case basis, reports to the Board of Directors, at its earliest possible meeting, on the activities carried out and, where required, on activities that are on-going and/or planned, and whether it has used any of its independent financial resources.

In any case, the Supervisory Board submits a report to the Board of Directors at least once a year, reporting on its activities.

The President of the Supervisory Board, where necessary, assesses whether further forms of reporting are appropriate.

The second and third level control departments are required to send the Supervisory Board the annual plans prepared by them once they have been submitted to the Board of Directors.

The Supervisory Board, if it deems it appropriate, may convene coordination meetings with the Supervisory Boards of the subsidiary companies.

1.14.6. Information flows to the Supervisory Board

As already mentioned, the Organisational Model must set out obligations to provide information to the Supervisory Board.

The obligation to provide information³² represents a further tool to enable the Board to oversee the functioning of and compliance with the Organisational Model and the ex-post assessment of the causes that made it possible for any predicate offence to be committed. The obligation in question is intended for the business departments at risk of offences and concerns the periodic findings of the activities they carry out when performing the specific organisational and control measures provided for in the special section of this document. Examples of this information include, but are not limited to:

- conduct which may give rise to liability for alleged predicate offences;
- data and elements relating to the effective implementation, at all levels of the company, of the Organisational Model, with evidence of disciplinary proceedings in progress or completed and any penalties applied;
- requests for legal assistance made by managers and/or employees who are charged with having committed predicate offences;
- measures and information from law enforcement authorities which state that investigations are being conducted into alleged predicate offences.

³² The obligations to provide information on any conduct contrary to the provisions contained in the Model fall under an employee's broader duty of diligence and duty of loyalty pursuant to Articles 2104 and 2105, Italian Civil Code. Article 2104, Italian Civil Code: '*An employee shall use the diligence required by the nature of the work to be performed, by the interests of the undertaking and by the greater interest of national production. An employee must also observe the instructions for the performance and discipline of work given by the employer and the employees of the latter upon whom he or she is hierarchically dependent*'; See Article 2105: '*An employee shall not negotiate business deals, in his or her own name or on behalf of third parties, that are in competition with the employer, nor divulge information concerning the organisation and production methods of the employer's enterprise, or make use of them in such a way as to be prejudicial to it.*'

On this point, the Bank has adopted the 'Group Policy for the Management of Information Flows', which contains, in the Appendix, an indication of the information flows that each organisational unit must send to management, including to the Supervisory Board.

1.14.7. Reporting violations and whistleblowing

The Supervisory Board must be informed by employees, management, consultants, and partners regarding events that could render Banca Ifis liable under Italian Legislative Decree 231/2001.

In this respect, it is worth noting the general requirement that all recipients of the Model are required to report any information concerning the commission of offences, or the reasonable belief that offences are being committed or, in any case, any unlawful conduct or alleged unlawful conduct of relevance with regard to the rules set out in Italian Legislative Decree no. 231/2001, of which they become aware in the performance of their duties, or any violation or alleged violation of the rules set out in the Model or, in any case, conduct not in line with the rules of conduct adopted by Banca Ifis.

Banca Ifis, in line with legislation and best practices, defines the internal system aimed at allowing its own staff and the staff of its subsidiaries (the 'Subsidiaries') to report events or facts that may constitute a violation of the rules governing the activities carried out by the Parent Company and its Subsidiaries (also, the 'Group').

In the context of this system, the Bank has also established a reporting mechanism in line with the provisions of Article 6, paragraph 2-bis, on whistleblowing, which, as mentioned above, provides for:

- one or more channels enabling senior management and subordinates to submit reports of unlawful conduct relevant under Italian Legislative Decree 231/2001;
- at least one alternative reporting channel that ensures, by computerised means, that the reporting person's identity remains confidential;
- the prohibition of retaliatory or discriminatory acts against a whistleblower.

Banca Ifis has identified Internal Audit as the department responsible for the internal reporting system. The Head of Internal Audit informs the Parent Company's Supervisory Board and, if the report concerns a Subsidiary, the Subsidiary's Supervisory Board, of any reports received, where such reports are addressed to the Supervisory Board or in any case relate to events or facts that may render the Parent Company and/or the Subsidiary liable pursuant to Italian Legislative Decree 231/2001.

Reports are sent via specific, autonomous, and independent information channels that the Group has set up for this purpose. These channels ensure that the identity of whistleblowers and reported persons constantly remain confidential.

Group personnel may alternatively use one of the following channels:

- e-mail address (segnalazioneviolazione@bancaifis.it) dedicated to receiving reports of violations. This e-mail address can only be accessed by the Head of Banca Ifis's Internal Audit department;
- postal service (or internal mail). Reports must be sent in a sealed envelope marked 'STRICTLY CONFIDENTIAL' and must be addressed to the Head of Banca Ifis's Internal Audit department;
- dedicated whistleblowing app, accessible both from the corporate portal (IFIS4YOU) and from the Bank's website (www.bancaifis.it). The Head of Banca Ifis's Internal Audit department is solely responsible for managing this app;
- hand delivery by the reporting person to the Head of Banca Ifis's Internal Audit department;

- Bank employees can immediately submit a written report to their line manager or directly to the Supervisory Board.

If the reporting person considers that any of the ordinary channels above may be subject to a conflict of interest, a report can be sent directly to the President of the Parent Company's Board of Statutory Auditors.

In order to ensure that the identities of both the reporting person and the reported person remain confidential, specific persons within the ICT department are tasked with administering the email addresses and the dedicated software.

Reporting persons must ensure that a report includes any documentation deemed useful for reporting purposes. The report must contain the elements indicated in the 'Group Policy for Handling Reports of Violations (*whistleblowing*)'. When making the report, the reporting person must also state if he or she has a private interest in the report and must therefore declare if there is a possible conflict of interest.

The identity of the reporting person is guaranteed to remain confidential at every stage of the reporting process and cannot be disclosed without his or her express consent. Confidentiality obligations do not apply where the requested information is necessary for investigations or where there are proceedings initiated by law enforcement authorities following the report.

If the reporting person is not jointly responsible for the breach, in addition to confidentiality, the Group guarantees that he or she will be protected against retaliatory conduct, penalties, dismissal, direct or indirect discriminatory measures, that may affect working conditions for reasons directly or indirectly linked to the report. The reporting person, even if the report proves to be unfounded, will also be protected against disciplinary action, except in cases of wilful misconduct and/or gross negligence.

When a report is handled, the identity and personal data of the reported person will remain protected; his or her identity will only be disclosed if it is absolutely necessary and if it is required for carrying out appropriate investigations. Finally, the information contained in the reported is guaranteed to remain confidential. Where a report is made anonymously, the Group cannot guarantee that the reporting person will be protected.

Where reports are addressed to the Supervisory Board, the Head of Internal Audit will also inform the Parent Company's Supervisory Board and, if the report concerns a Subsidiary, the Supervisory Board of the Subsidiary, where one exists.

After having assessed whether a report has merit, the Head of Internal Audit will analyse its content in detail, coordinating with the Supervisory Board for reports addressed to it or for reports which in any way refer to events or facts that may entail liability pursuant to Italian Legislative Decree no. 231/2001. This analysis will investigate:

- the organisational area to which the violation refers;
- the identity of the person(s) responsible for the actions related to the reported violation;
- the nature of the violation.

The Head of Internal Audit will establish and perform any actions required to verify the facts alleged in the report, in compliance with:

- the principles of impartiality, confidentiality, ensuring dignity for employees, and protection of personal data;
- employment law, and contractual regulations for the sector.

To investigate the contents of the report, the Head of Internal Audit may be assisted by staff belonging to the Organisational Unit he supervises, may involve staff from other departments, or may request support from third parties, where this is strictly necessary or appropriate in light of the particular subject matter of the report received.

Once the investigation is complete, the Head of Internal Audit will formalise his or her assessments and will forward them to the relevant management bodies and, where relevant, to the Supervisory Board, unless potential conflicts of interest prevent this. If there are potential conflicts of interest, the report(s) will be sent directly to the President of the Parent Company's Board of Statutory Auditors. Whoever receives the report will make the most appropriate choices with respect to the events or facts that have come to light. Where necessary, this will involve the Human Resources department in order to define any disciplinary measures against the reported person and to manage the report and the ensuing investigation against him/her.

The Head of Internal Audit will not be involved in the decision-making process. This process will remain the exclusive responsibility of the relevant organisational units or management bodies.

For each report received, the Head of Internal Audit will also inform the reporting person of the conclusion of the Internal Audit investigations.

The documentation produced will be stored with the appropriate measures in place to ensure confidentiality.

In particular:

- paper documentation:
 - will be stored in a secure location that is not accessible to third parties;
 - where documentation is forwarded to third parties, it will be forwarded confidentially; tracked to ensure it is only sent to the intended recipients and obtaining confirmation of receipt, whenever possible.
- electronic documentation will be stored on network folders with controlled and restricted access. All data (including attachments) included in reports managed through the dedicated app will be encrypted.

1.15. The disciplinary system

As already stated, for the Bank to limit its corporate liability in the event of an offence being committed, the Bank must ensure not only that a Model is adopted, but also that it is effectively implemented. Effective implementation requires, inter alia, the Bank to adopt and implement an appropriate disciplinary system for penalising non-compliance with the measures indicated in the Model. This system complements and renders the Organisational Model effective³³. Legislation explicitly states that a disciplinary system is an essential component of an effectively implemented Organisational Model.

With particular regard to persons in senior positions, Article 6, paragraph 2, Italian Legislative Decree 231/2001, states that: *'in relation to the extent of delegated powers and the risk of offences being committed, models must [...] e) introduce a disciplinary system imposes penalties for failure to comply with the measures indicated in the model'*; with reference to persons subject to the direction of others, Article 7, paragraph 4 of Italian Legislative Decree 231/2001 states that: *'The effective implementation of a model requires: [...] b) a disciplinary system imposes penalties for failure to comply with the measures indicated in the model.'*

³³ See Confindustria Guidelines pp. 70–71

1.15.1. General principles

Banca Ifis undertakes to be vigilant in order to avoid violations of the Organisational Model adopted and to impose appropriate penalties upon any person engaging in any conduct contrary to the directives contained in it, adopting the disciplinary measures set out in the collective bargaining agreement.

Employees will be made aware of the disciplinary rules by means of a copy posted in a place accessible to all (pursuant to Article 7, Italian Law no. 300 of 20th May 1970) and by means of a service notice.

Banca Ifis's disciplinary system will apply to all categories of persons covered by its Organisational Model (below) and will be applied in line with the main reference rules governing the respective contractual relationships: (i) persons in a senior position; (ii) persons in a subordinate position, i.e., subject to the direction or supervision of others; (iii) persons linked to the Bank through relationships of a collaborative or commercial nature. Banca Ifis S.p.A.'s disciplinary system is separate from any criminal proceedings that may be taken as a result of unlawful conduct. Based on the results of investigations conducted by its Supervisory Board, Banca Ifis is entitled to apply any disciplinary penalty it deems most appropriate to the case, since the separate nature of the Bank's disciplinary system means it will not interfere with any criminal prosecution³⁴.

The type and severity of each of the penalties set out below should be determined in relation to the following:

- the seriousness of the violations committed and in proportion to them;
- the tasks performed;
- the ability to foresee the event;
- the intentional nature of the conduct or degree of negligence, recklessness, or inexperience;
- the overall conduct of the persons involved;
- the functional position of the persons involved in the facts constituting the failure and the level to which they have a relationship of trust with the Bank;
- any other particular circumstances surrounding the disciplinary violation.

Penalties will be determined and applied in proportion to the alleged violation and will be suitable for the alleged violation.

³⁴ Failure to comply with the measures laid down in the organisational model will result in the activation of the penalty mechanism set out in it, regardless of whether a criminal prosecution is instituted for any offence that may have been committed. On the contrary, a model can only be said to be effectively implemented when it activates the disciplinary apparatus to counter conduct which may lead to an offence being committed. In fact, a disciplinary system which imposes penalties for conduct that already constitutes an offence in itself would end up unnecessarily duplicating the penalties imposed by the state (a sentence for the person and a penalty for the entity pursuant to Italian Legislative Decree no. 231). Instead, it makes sense to provide for a disciplinary apparatus if it operates as an internal safeguard within the company, which adds to and prevents the application of "external" penalties by the state.' See Confindustria, Confindustria Guidelines, p. 71. Similarly, 'the disciplinary system, again in the context of a subordinate employment relationship, can be drawn up and applied regardless of the criminal significance of the conduct; it is separate from any possible criminal prosecution; rather, it must remain clearly distinct and separate from criminal and administrative law; in that its function is specifically preventive and not merely punitive. This means that the Bank must take prompt action against any person who violates its rules of conduct, even if that person's conduct neither constitutes a criminal offence nor gives rise to direct liability on the part of the Bank. Simply put, the Bank must act regardless of whether the person is found to have broken the law. In fact, it is a well-established principle of employment law - which can also be extended to para-subordinate employment contracts - that the seriousness of the employee's conduct and its ability to affect, to a greater or lesser extent, the bond of trust that binds him or her to the company, can and must be assessed separately from the seriousness of the conduct from a criminal perspective' (see Italian Banking Association Guidelines p. 40).

Any disciplinary penalty proposed by the Supervisory Board will be assessed by the Board of Directors, in its role as the competent body with responsibility for imposing penalties.

1.15.2. Employees

With reference to the provisions on disciplinary matters set out in the Italian Banking Association's Disciplinary Code³⁵ for middle managers and 1st-, 2nd-, and 3rd-level staff employed by credit, financial and operating enterprises, and in consideration of the special trust which form the basis of employment contracts with those enterprises, the following penalties shall be applied in proportion to the seriousness of the infringements indicated below:

- 1st-level employees
 - Verbal warning:
 - minor infringement of duties set out in the contract or instructions given by superiors;
 - minor negligence in the performance of work.
 - Written warning:
 - for conduct punishable by a verbal warning, but, due to objective circumstances, specific consequences or if it is repeated conduct, has greater significance;
 - significant but not serious infringement of duties set out in the contract or instructions given by superiors;
 - significant but not serious negligence in the performance of work.
 - Suspension from service without pay for a period no greater than 10 days:
 - for conduct punishable by lesser penalties, but, due to objective circumstances, specific consequences or if it is repeated conduct, has greater significance;
 - repeated or serious breach of contractual duties or instructions given by superiors;
 - serious negligence in the performance of work.
 - Dismissal for justified reason:
 - a breach of contractual terms or duties covered by the disciplinary system, by company directives, or by work performance, which constitutes, either due to the particular nature of the breach or because of its repeated nature, a "substantial" failure to comply with the relevant obligations.
 - Dismissal for just cause:
 - a breach of such seriousness (either because of the wilfulness of the act, or because of its criminal or economic consequences, or because of its repeated nature, or because of its particular nature) as to cause an undermining of the trust upon which the employment contract is based and which would not allow in any case the continuation, even provisional, of that contract.
- Middle managers, 2nd- and 3rd-level employees
 - Verbal warning:
 - minor infringement of contractual terms or directives and instructions issued by management or superiors;
 - minor negligence in the performance of work;
 - tolerance of minor irregularities committed by other staff members or third parties;

³⁵ See Italian Banking Association's Disciplinary Code 1st June 2001.

- Written warning:
 - repetition of conduct punishable by verbal warning;
 - significant but not serious infringement of contractual terms or directives and instructions issued by management or superiors;
 - significant but not serious negligence in the performance of work.
 - failure to report or toleration of significant but not serious irregularities committed by other staff members or third parties;
- Suspension from service without pay for a period no greater than 10 days:
 - for conduct punishable by lesser penalties, but, due to objective circumstances, specific consequences or if it is repeated conduct, has greater significance;
 - repeated or serious infringement of contractual terms or directives and instructions issued by management or superiors;
 - failure to report or toleration of serious irregularities committed by other staff members or third parties;
 - serious negligence or negligence which has adversely affected the company or third parties;
- Dismissal for justified reason:
 - a breach of contractual terms or duties covered by the disciplinary system, by company directives, or by work performance, which constitutes, either due to the particular nature of the breach or because of its repeated nature, a “substantial” failure to comply with the relevant obligations.
- Dismissal for just cause:
 - a breach of such seriousness (either because of the wilfulness of the act, or because of its criminal or economic consequences, or because of its repeated nature, or because of its particular nature) as to cause an undermining of the trust upon which the employment contract is based and which would not allow in any case the continuation, even provisional, of that contract.

In relation to the provisions of Article 7, paragraph 1, of the agreement of 23rd January 2001³⁶ *‘employees who abstain from work in connection with strike action initiated in violation of the provisions of the aforementioned agreement will be subject to disciplinary penalties – that are objectively and subjectively in proportion to the seriousness of the infringement – pursuant to the law and contractual provisions (including a fine), with the exclusion of measures terminating the employment contract’.*

Disciplinary measures are applied in relation to the seriousness or repeated nature of the misconduct or the degree of guilt. The National Collective Bargaining Agreement states that: *‘Disciplinary measures are applied in relation to the seriousness or repeated nature of the misconduct or the degree of guilt. When required by the nature of the misconduct or by the need to ascertain its consequences, the company, pending a decision on the definitive disciplinary measure,*

³⁶ National agreement of 23rd January 2001 for the regulation of the exercise of the right to strike in the credit sector, agreed between the Italian Banking Association (ABI) and the following trade unions: FABI, FALCRI, FEDERDIRIGENTICREDITO, FIBA-CISL, FISAC-CGIL, SINFUB, UIL C.A. This agreement has been assessed as being suitable by the Strike Guarantee Commission with resolution no. 01/9 of 22/02/2001 and published in the Official Gazette of the Italian Republic no. 220 of 21/09/2001 - ordinary supplement no. 233.

*may order that the employee be temporarily suspended from service for the time strictly necessary [to complete the process]*³⁷.

In relation to the provisions of Italian Legislative Decree no. 231/2001, governing the administrative liability of legal entities, companies and in particular, pursuant to Article 7, paragraph 4, letter b), also with specific reference to the provisions of Articles 30 and 300 of Italian Legislative Decree no. 81/2008, as amended, concerning workplace health and safety, employees who breach the obligations set out in these Decrees will be subject to disciplinary penalties - objectively and subjectively correlated to the seriousness of the breach - pursuant to the law and contractual provisions, the Code of Ethics and in compliance with the criteria of proportionality set out in the ABI Disciplinary Code.

An employer may not take any disciplinary action against an employee without first notifying him or her of the charge and hearing his or her defence. Measures may not be imposed until five days have elapsed, during which the employee may present his or her defence.

1.15.3. Self-employed persons; External contractors; Persons/Entities having commercial contractual relations with Banca Ifis

The consequences of any self-employed worker, external contractor, person/entity having contractual/commercial relations with the Bank, failing to comply with the Bank's Organisational Model, are as follows:

- any consultant/contractor found to have violated the internal procedures and provisions laid down in the Organisational Model, or to have conducted him or herself in a manner that does not meet the requirements of the Model, will be issued with a verbal warning. Minutes of the interview will be prepared and kept by the Supervisory Board;
- if, in the performance of his or her duties, a consultant/collaborator is found to have conducted him or herself in a manner that is clearly in breach of the provisions of the Organisational Model in force and of such seriousness as to lead to the penalties laid down in the Decree being imposed against the Bank, will have their consultancy/collaboration contract terminated. Conduct of this type will include the acts that may undermine the Bank's trust in him or her or may cause considerable damage to the Bank.

This is without prejudice to the Bank's right to claim compensation for damages incurred as a result of such conduct.

1.15.4. Measures against Senior Management, Directors, and Statutory Auditors

If a person holding a senior management position within the company, i.e., an executive with representative, administrative or management functions in the company or in one of its organisational units with financial and functional autonomy, as well as by a person who also de facto manages and controls the company, whose relationship is characterised by a high degree of trust, does not comply with the Bank's Organisational Model, the following penalties may be imposed:

- a verbal warning may be given to any manager who violates the internal procedures and provisions laid down in the Organisational Model in force in the Bank, or who, in the

³⁷ See Article 44 of the National Collective Bargaining Agreement of 31st March 2015.

performance of activities in areas at risk, conducts him or herself in a manner that does not meet the requirements of the Model; conduct of this type will include failure to comply with the behavioural provisions circulated within the company. Minutes of the verbal warning will be prepared and kept by the Supervisory Board established pursuant to Italian Legislative Decree 231/2001.

The Bank will make an assessment as to whether it is justified to terminate the manager's employment contract early. This assessment will be based on the seriousness of the breach of the behavioural requirements in force in the company.

If, in the performance of activities in areas at risk, a manager conducts him or herself in a manner that is clearly in breach of the provisions of the Organisational Model in force in the company and of such seriousness as to lead to the penalties laid down in Italian Legislative Decree no. 231/2001 being imposed against the Bank, his or her employment relationship will be terminated; conduct of this type will include the performance of acts that would undermine the company's trust in him or her, or would lead to considerable damage being caused to the company.

With regard to misconduct on the part of a Director or Statutory Auditor, the Supervisory Board will inform the entirety of the Bank's Board of Directors and the Board of Statutory Auditors, which will take the appropriate steps provided for by the applicable legislation.

If a Director or Statutory Auditor acts in a manner which leads to the commission of any of the offences referred to in Legislative Decree No. 231/2001, upon proposal from the Supervisory Board, the Board of Directors may impose the following penalties:

- a verbal warning may be given to any Director or Statutory Auditor who violates the internal procedures and provisions laid down in the Organisational Model in force in the Bank, or who, in the performance of activities in areas at risk, conducts him or herself in a manner that does not meet the requirements of the Model; conduct of this type will include failure to comply with the behavioural provisions circulated within the company. Minutes of the verbal warning will be prepared and kept by the Supervisory Board established pursuant to Italian Legislative Decree 231/2001;
- If, in the performance of activities in areas at risk, a Director or Statutory Auditor conducts him or herself in a manner that is clearly in breach of the provisions of the Organisational Model in force in the company and of such seriousness as to lead to the penalties laid down in Italian Legislative Decree no. 231/2001 being imposed against the Bank, a proposal will be submitted to the Shareholders Meeting that he or she be removed from post for just cause; conduct of this type will include the performance of acts that would undermine the company's trust in him or her, or would lead to considerable damage being caused to the company.

1.15.5. Smoking ban, Italian Law 3/2003

Current legislation requires employers to provide safety measures that ensure a healthy working environment is provided and the psychological and physical integrity of their workers is protected.

In relation to the provisions of Article 51, paragraph 1, Italian Law no. 3 of 16th January 2003, as amended by Article 7 of Italian Law no. 306 of 21st October 2003 on "protecting the health of non-smokers", employees who violate the obligations set out in it will be subject to disciplinary penalties that are objectively and subjectively correlated to the seriousness of the violation pursuant to the law and contractual provisions, in compliance with the criteria of proportionality set out in this disciplinary code.

Pursuant to Italian Law no. 3/2003, fines for this type of offence range from a minimum of EUR 27.50 to a maximum of EUR 275.00. This fine is doubled if the violation is committed in the

presence of an obviously pregnant woman or in the presence of children aged 11 and under. For those responsible for enforcing the no-smoking regulations, fines range from a minimum of EUR 220.00 to a maximum of EUR 2,200.00, increased by half in the event that the failure to take preventive measures has exposed clearly pregnant women and children aged 11 and under to passive smoking.

1.16. Communicating the Organisational Model to its intended audience and providing training on the Model

In order to effectively implement its Organisational Model, Banca Ifis must circulate its rules and safeguards to the Model's intended audience³⁸.

Awareness of a company's Organisational Model is obviously a prerequisite for its application and allows those who work or collaborate with Banca Ifis to be accountable, ruling out the possibility that any improper conduct can be justified on the grounds of not being aware of the Model or that unlawful conduct, whether intentional or negligent, can take place in a corporate and business context as a result of a lack of understanding or misinterpretation of the Model itself or of the internal rules it refers to.

In principle, a model must be communicated to staff clearly, effectively, and comprehensively and must allow continuous access to all '231 tools' including, in addition to this document, the Group's Code of Ethics, its procedures, powers of authorisation and signature, reporting lines, etc.

From this perspective, the updated version of the Banca Ifis Organisational Model is available and can be downloaded from the Ifis4You portal, which also provides access to all regulations and documents that are an integral or accessory part of the Model.

At the outset of their working relationship with Banca Ifis, new employees and contractors, at whatever level they are appointed, are provided with all the information they need to access the Bank's Organisational Model and the Group's Code of Ethics, so they can ensure that they are familiar with them and, where necessary, can be aware of the contents of Italian Legislative Decree no. 231/2001 and of the essential features of the rules regarding an entity's administrative liability.

In order to make Recipients more aware of and responsible for their conduct, new employees and collaborators must sign a declaration of commitment to view these documents and comply with their requirements³⁹.

Banca Ifis will augment this information by providing training activities on the subject of Italian Legislative Decree no. 231/2001 and the relevant predicate offences in accordance with the Confindustria Guidelines⁴⁰.

³⁸(..) 'Communication to staff and training' 'These are two important requirements for a model to function properly and must be modulated differently depending on the recipient: employees in general, those working in specific risk areas/sensitive areas, members of management bodies, etc.'. A company's code of ethics must be communicated to staff, as must its other instruments such as authorisation powers, hierarchical reporting lines, procedures, information flows and everything that allows its daily operations to be transparent. Communication must be: widespread, effective, authoritative (i.e., issued from an appropriate level), clear and detailed, and periodically repeated. In addition, access to and consultation of the documents that make up the Model must also be allowed through the corporate intranet'. (See Confindustria Guidelines p. 53)

³⁹ Newly appointed employees, on the other hand, are given a set of information (e.g., National Collective Bargaining Agreement, Organisational Model, Italian Legislative Decree no. 231/2001, etc.), in order to ensure that they are provided with knowledge considered to be of primary importance.

For training to be effective, content must also be available via remote channels and communication tools, including via online training packages, where these are technically feasible. The Supervisory Board is responsible for verifying the suitability and effectiveness of training activities.

1.17. Updating and improving the Organisational Model

As already noted, Article 6, paragraph 1, letter b), Italian Legislative Decree no. 231/2001 makes the Supervisory Board responsible for updating the Model. This provision translates into a power to solicit and propose organisational changes. The company may be held liable if organisational changes later deemed necessary are not made.

Although the legislation does not expressly identify the situations in which it is necessary to adapt and update the Organisational Model, it is clear that this will generally be necessary whenever the Model is no longer suitable to effectively address the risks of offences.

Examples of the situations in which it is necessary to update and adapt the Organisational Model of Banca Ifis include, but are not limited to:

- significant violations of the Model that, in terms of frequency, seriousness or manner, highlight deficiencies or shortcomings;
- significant changes in the company's internal structure, business activities or the manner in which they are carried out. For example, companies such as Banca Ifis, which over time have undergone an evolution and expansion of their corporate and business structures, by entering new business sectors – including through the acquisition of third-party companies – and through strategic choices, such as listing on the stock exchange;
- regulatory and legislative changes. This is what has occurred most frequently in recent years, relating to the extension of the catalogue of predicate offences. However, we should not discount the possibility that one of the predicate offences may be excluded in future, perhaps as a result of the offence itself being repealed. Case law, especially that concerned with legitimacy, has in the past provided clarification on how to interpret Italian Legislative Decree no. 231/2001. Clarification provided by case law may require changes to be made to the Model;
- instances when the relevant trade association issues and amends its guidelines and sends them to the Ministry of Justice pursuant to Article 6, Italian Legislative Decree no. 231/2001 and Articles 5 et seq., Italian Ministerial Decree no. 201 of 26th June 2003.

It is the duty of the audit departments and of all the Bank's other departments to inform the Supervisory Board of facts and events that may require the Bank to adjust its Model.

To this end, the Bank has adopted a document, duly formalised, which sets out the roles and responsibilities for updating the Organisational Model.

⁴⁰ As well as communicating the Model to employees/collaborators, an appropriate training programme must be developed and targeted according to the level to which the employee/collaborator belongs. It must illustrate the reasons - legal and otherwise - that inspire these rules and their scope. In this respect, it is appropriate to set out the content and frequent of training courses, and the fact that participation in the courses is compulsory. There will be controls regarding attendance and the quality of the content of the programmes, and the contents of these training courses will be systematically updated as and when the Model itself is updated. (See Confindustria Guidelines p. 53)

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Appendices

1. Banca Ifis Group's Code of Ethics